

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

**FORM 8-K**

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

Date of report (Date of earliest event reported): **September 20, 2019**

**Midland States Bancorp, Inc.**

(Exact Name of Registrant as Specified in Charter)

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

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

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

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

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

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

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

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

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

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

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

Emerging growth company

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

**Item 1.01. Entry into a Material Definitive Agreement.**

On September 20, 2019, Midland States Bancorp, Inc. (the “Company”) issued and sold \$72.75 million aggregate principal amount of 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029 (the “2029 Notes”), and \$27.25 million aggregate principal amount of 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034 (the “2034 Notes” and, together with the 2029 Notes, the “Notes”). The Company used a portion of the net proceeds from the offering to repay a \$30.0 million senior term loan and intends use the remaining net proceeds to redeem \$40.3 million of existing subordinated debt on or after June 18, 2020, which is the date that the existing subordinated debt becomes redeemable, and for general corporate purposes.

The 2029 Notes mature September 30, 2029 and were issued pursuant to an Indenture, dated as of September 20, 2019 (the “2029 Indenture”), between the Company and UMB Bank National Association, as trustee. The 2029 Notes bear interest at an initial fixed rate of 5.00% per annum from and including the issuance date to but excluding September 30, 2024. From and including September 30, 2024 to but excluding the maturity date, the 2029 Notes bear interest at a floating rate, reset quarterly. The Company is entitled to redeem the 2029 Notes, in whole or in part, on any interest payment date on or after September 30, 2024, and to redeem the 2029 Notes in whole upon certain other events.

The 2034 Notes mature September 30, 2034 and were issued pursuant to an Indenture, dated as of September 20, 2019 (the “2034 Indenture”), between the Company and UMB Bank National Association, as trustee. The 2034 Notes bear interest at an initial fixed rate of 5.50% per annum from and including the issuance date to but excluding September 30, 2029. From and including September 30, 2029 to but excluding the maturity date, the 2034 Notes bear interest at a floating rate, reset quarterly. The Company is entitled to redeem the 2034 Notes, in whole or in part, on any interest payment date on or after September 30, 2029, and to redeem the 2034 Notes in whole upon certain other events.

The Notes were sold in a private placement transaction, in reliance upon the exemptions from registration afforded by Section 4(a)(2) and Rule 506(b) under the Securities Act of 1933, as amended (the “Securities Act”). In connection with the offering, the Company entered into a Registration Rights Agreement, dated as of September 20, 2019 (the “Registration Rights Agreement”), with the purchasers, pursuant to which the Company has agreed to conduct an offer to exchange the Notes for substantially identical subordinated notes in an offering registered under the Securities Act (the “Exchange Offer”). If the Company fails to comply with certain of its obligations under the Registration Rights Agreement, it will be required to pay additional interest to the holders of the Notes.

The Notes are not subject to any sinking fund and are not convertible into or, other than in the Exchange Offer, exchangeable for any other securities or assets of the Company or any of its subsidiaries. The Notes are not subject to redemption at the option of the holder. The Notes are unsecured, subordinated obligations of the Company only and are not obligations of, and are not guaranteed by, any subsidiary of the Company. The Notes rank junior in right to payment to the Company’s current and future senior indebtedness. The Notes are intended to qualify as Tier 2 capital of the Company for regulatory capital purposes.

The foregoing summaries of the 2029 Indenture, the 2029 Notes, the 2034 Indenture, the 2034 Notes and the Registration Rights Agreement are qualified in their entirety by reference to the full text of such agreements, copies or forms of which are filed herewith as Exhibits 4.1, 4.2., 4 3, 4.4 and 4.5, respectively and are incorporated herein by reference.

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**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information in Item 1.01 is incorporated herein by reference.

**Item 7.01 Regulation FD Disclosure.**

On September 20, 2019, the Company issued a press release announcing the completion of the offering of the Notes, a copy of which is furnished herewith as Exhibit 99.1.

In connection with the offering of the Notes, the Company delivered an investor presentation to potential investors on a confidential basis, a copy of which is furnished herewith as Exhibit 99.2.

The information in this Item 7.01 and the attached exhibits shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, nor shall they be deemed incorporated by reference in any filing under the Securities Act, except as shall be expressly set forth by specific reference in any such filing.

**Cautionary Note Regarding Forward-Looking Statements**

This Report includes "forward-looking statements" within the meanings of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including but not limited to statements about the anticipated use of net proceeds from the offering, the Exchange Offer and other matters. These statements are subject to many risks and uncertainties, including changes in interest rates and other general economic, business and political conditions, including changes in the financial markets; changes in business plans as circumstances warrant; risks relating to acquisitions; and other risks detailed from time to time in filings made by the Company with the Securities and Exchange Commission. Readers should note that the forward-looking statements included in this Report are not a guarantee of future events, and that actual events may differ materially from those made in or suggested by the forward-looking statements. Forward-looking statements generally can be identified by the use of forward-looking terminology such as "will," "propose," "may," "plan," "seek," "expect," "intend," "estimate," "anticipate," "believe" or "continue," or similar terminology. Any forward-looking statements presented herein are made only as of the date of this Report, and the Company does not undertake any obligation to update or revise any forward-looking statements to reflect changes in assumptions, the occurrence of unanticipated events, or otherwise.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">4.1</a>	<a href="#">Indenture, dated as of September 20, 2029, between Midland States Bancorp, Inc. and UMB Bank National Association, as trustee, regarding 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029</a>
<a href="#">4.2</a>	<a href="#">Form of 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029 (included in Exhibit 4.1)</a>
<a href="#">4.3</a>	<a href="#">Indenture, dated as of September 20, 2029, between Midland States Bancorp, Inc. and UMB Bank National Association, as trustee, regarding 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034</a>
<a href="#">4.4</a>	<a href="#">Form of 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034 (included in Exhibit 4.3)</a>
<a href="#">4.5</a>	<a href="#">Form of Registration Rights Agreement, dated as of September 20, 2019, among Midland States Bancorp, Inc. and the purchasers party thereto</a>
<a href="#">99.1</a>	<a href="#">Press Release of Midland States Bancorp, Inc., dated September 20, 2019</a>
<a href="#">99.2</a>	<a href="#">Investor Presentation of Midland States Bancorp, Inc., dated September 2019</a>
104	Cover Page Interactive Data File (the cover page XBRL tags are embedded in the Inline XBRL document).

**SIGNATURES**

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

Date: September 20, 2019

MIDLAND STATES BANCORP, INC.

By: /s/ Douglas J. Tucker

Name: Douglas J. Tucker

Title: Senior Vice President and Corporate Counsel

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**MIDLAND STATES BANCORP, INC.**

**As Issuer,**

**and**

**UMB Bank National Association**

**As Trustee**

**INDENTURE**

**Dated as of September 20, 2019**

**5.00% Fixed-to-Floating Rate Subordinated Notes due 2029**

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**CROSS-REFERENCE TABLE**

Trust Indenture Act Section	Indenture Section
§310(a)(1)	5.08
(a)(2)	5.08
(a)(3)	Not applicable
(a)(4)	Not applicable
(a)(5)	5.08
(b)	5.08, 5.09
§311(a)	5.05
(b)	5.05
§312(a)	6.01
(b)	6.02
(c)	6.02
§313(a)	6.03
(b)(1)	6.03
(b)(2)	6.03
(c)	6.03
(d)	6.03
§314(a)	6.04
(a)(4)	9.08
(b)	Not applicable
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	Not applicable
(d)	Not applicable
(e)	1.02
(f)	Not applicable
§315(a)	5.01, 5.02
(b)	5.03
(c)	5.01
(d)	5.01, 5.02
(e)	4.13
§316(a)	4.11, 4.12
(b)	4.07
(c)	1.04
§317(a)(1)	4.02
(a)(2)	4.03
(b)	9.03
§318(a)	1.07
(b)	1.07
(c)	1.07

Note: This Cross-Reference table will not, for any purpose, be deemed part of this Indenture.

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## TABLE OF CONTENTS

	<b>Page</b>
<b>ARTICLE I DEFINITIONS AND INCORPORATION BY REFERENCE</b>	<b>1</b>
Section 1.01    Definitions	1
Section 1.02    Compliance Certificates and Opinions	13
Section 1.03    Form of Documents Delivered to Trustee	14
Section 1.04    Acts of Holders	15
Section 1.05    Required Notices or Demands	16
Section 1.06    Incorporation by Reference of Trust Indenture Act; Conflicts	17
Section 1.07    Effect of Headings and Table of Contents	18
Section 1.08    Successors and Assigns	18
Section 1.09    Severability	18
Section 1.10    Benefits of Indenture	18
Section 1.11    Governing Law	18
Section 1.12    Legal Holidays	19
Section 1.13    Counterparts; Electronic Transmission	19
Section 1.14    Immunity of Certain Persons	19
Section 1.15    Waiver of Jury Trial	19
Section 1.16    Force Majeure	19
Section 1.17    No Sinking Fund	20
Section 1.18    Rules of Construction	20
<b>ARTICLE II THE SUBORDINATED NOTES</b>	<b>20</b>
Section 2.01    Forms Generally	20
Section 2.02    Definitive Subordinated Notes	21
Section 2.03    Global Subordinated Notes	21
Section 2.04    Restricted Subordinated Notes	21
Section 2.05    Execution and Authentication	22
Section 2.06    Registrar and Paying Agent	23
Section 2.07    Registration of Transfer and Exchange	23
Section 2.08    Exchange Offer	27
Section 2.09    Mutilated, Destroyed, Lost and Stolen Subordinated Notes	28
Section 2.10    Payment of Interest; Rights to Interest Preserved	28
Section 2.11    Persons Deemed Owners	30
Section 2.12    Cancellation	30
Section 2.13    Computation of Interest	30
Section 2.14    CUSIP Numbers	31
<b>ARTICLE III SATISFACTION AND DISCHARGE OF INDENTURE</b>	<b>31</b>
Section 3.01    Satisfaction and Discharge	31
Section 3.02    Defeasance and Covenant Defeasance	32
Section 3.03    Application of Trust Money	35
Section 3.04    Reinstatement	35
Section 3.05    Effect on Subordination Provisions	35

ARTICLE IV REMEDIES	36
Section 4.01	Events of Default; Acceleration 36
Section 4.02	Failure to Make Payments 37
Section 4.03	Trustee May File Proofs of Claim 38
Section 4.04	Trustee May Enforce Claims Without Possession of Subordinated Notes 39
Section 4.05	Application of Money Collected 39
Section 4.06	Limitation on Suits 40
Section 4.07	Unconditional Right of Holders to Payments 40
Section 4.08	Restoration of Rights and Remedies 40
Section 4.09	Rights and Remedies Cumulative 40
Section 4.10	Delay or Omission Not Waiver 41
Section 4.11	Control by Holders 41
Section 4.12	Waiver of Past Defaults 41
Section 4.13	Undertaking for Costs 42
ARTICLE V THE TRUSTEE	42
Section 5.01	Duties of Trustee 42
Section 5.02	Certain Rights of Trustee 43
Section 5.03	Notice of Defaults 45
Section 5.04	Not Responsible for Recitals or Issuance of Subordinated Notes 45
Section 5.05	May Hold Subordinated Notes 45
Section 5.06	Money Held in Trust 46
Section 5.07	Compensation and Reimbursement 46
Section 5.08	Corporate Trustee Required; Eligibility 47
Section 5.09	Resignation and Removal; Appointment of Successor 47
Section 5.10	Acceptance of Appointment by Successor 49
Section 5.11	Merger, Conversion, Consolidation or Succession to Business 50
Section 5.12	Appointment of Authenticating Agent 50
Section 5.13	Preferred Collection of Claims against Company 51
ARTICLE VI HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY	52
Section 6.01	Holder Lists 52
Section 6.02	Preservation of Information; Communications to Holders 52
Section 6.03	Reports by Trustee 52
Section 6.04	Reports by Company 53
ARTICLE VII SUCCESSORS	54
Section 7.01	Merger, Consolidation or Sale of All or Substantially All Assets 54
Section 7.02	Successor Person Substituted for Company 54
ARTICLE VIII SUPPLEMENTAL INDENTURES	55
Section 8.01	Supplemental Indentures without Consent of Holders 55
Section 8.02	Supplemental Indentures with Consent of Holders 56
Section 8.03	Execution of Supplemental Indentures 57
Section 8.04	Effect of Supplemental Indentures 57
Section 8.05	Reference in Subordinated Notes to Supplemental Indentures 57
Section 8.06	Effect on Senior Indebtedness 57



Section 8.07	Conformity with Trust Indenture Act	57
ARTICLE IX COVENANTS		58
Section 9.01	Payment of Principal and Interest	58
Section 9.02	Maintenance of Office	58
Section 9.03	Money for Subordinated Notes Payments to Be Held in Trust	59
Section 9.04	Corporate Existence	60
Section 9.05	Maintenance of Properties	60
Section 9.06	Dividends	60
Section 9.07	Waiver of Certain Covenants	60
Section 9.08	Company Statement as to Compliance	61
Section 9.09	Tier 2 Capital	61
ARTICLE X REDEMPTION OF SECURITIES		61
Section 10.01	Applicability of Article	61
Section 10.02	Election to Redeem; Notice to Trustee	62
Section 10.03	Selection by Trustee of Subordinated Notes to be Redeemed	62
Section 10.04	Notice of Redemption	63
Section 10.05	Deposit of Redemption Price	64
Section 10.06	Subordinated Notes Payable on Redemption Date	64
Section 10.07	Subordinated Notes Redeemed in Part	64
ARTICLE XI SUBORDINATION OF SECURITIES		65
Section 11.01	Agreement to Subordinate	65
Section 11.02	Distribution of Assets	65
Section 11.03	Default With Respect to Senior Indebtedness	67
Section 11.04	No Impairment	67
Section 11.05	Effectuation of Subordination Provisions	68
Section 11.06	Notice to Trustee	68
Section 11.07	Trustee Knowledge of Senior Indebtedness	69
Section 11.08	Senior Indebtedness to Trustee	69
Section 11.09	Subordination Not Applicable to Trustee Compensation	69

This INDENTURE dated as of September 20, 2019 is between Midland States Bancorp, Inc., an Illinois corporation (the “Company”), and UMB Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

## **RECITALS**

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for an issue of \$72,750,000 in aggregate principal amount of 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029, subject to the terms and conditions set forth in this Indenture.

NOW, THEREFORE, in order to declare the terms and conditions upon which the Subordinated Notes are authenticated, issued and delivered, and in consideration of the premises, and of the purchase and acceptance of the Subordinated Notes by the Holders thereof, the Company and the Trustee agree as follows for the benefit of each other and for the benefit of the respective Holders from time to time of the Subordinated Notes.

## **ARTICLE I** **DEFINITIONS AND INCORPORATION BY REFERENCE**

### Section 1.01            Definitions.

Except as otherwise expressly provided in this Indenture or unless the context otherwise requires, the terms defined in this Section for all purposes of this Indenture, any Company Order, any Board Resolution, and any indenture supplemental hereto will have the respective meanings specified in this Section.

“Act,” when used with respect to any Holders, is defined in Section 1.04.

“Additional Interest” has the meaning set forth in the Registration Rights Agreement.

“Affiliate” means, with respect to any specified Person, 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.

“Applicable Procedures” means, with respect to any transfer or exchange of or for beneficial interests in any Global Subordinated Note, the rules and procedures of the Depository that apply to such transfer or exchange.

“Authenticating Agent” means any Person authorized by the Trustee in accordance with Section 5.12 to act on behalf of the Trustee to authenticate Subordinated Notes.

“Authorized Officer” means each of the Chairman of the Board, the Chief Executive Officer, the President, any Senior Vice President, the Chief Financial Officer and the Chief Accounting Officer of the Company.

“Bankruptcy Laws” mean Title 11, United States Code (11 U.S.C. §§101 et seq.) or any similar federal or state law for the relief of debtors.

“Benchmark” means, initially, Three-Month Term SOFR; *provided* that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement.

“Benchmark Replacement” means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then “Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- (a) Compounded SOFR;
- (b) the sum of: (i) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (ii) the Benchmark Replacement Adjustment;
- (c) the sum of: (i) the ISDA Fallback Rate and (ii) the Benchmark Replacement Adjustment;
- (d) the sum of: (i) the alternate rate of interest that has been selected by the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated floating rate notes at such time and (ii) the Benchmark Replacement Adjustment.

“Benchmark Replacement Adjustment” means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (b) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
- (c) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Floating Interest Period,” timing and frequency of determining rates with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors and other administrative matters) that the Company decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) of the definition of “Benchmark Transition Event,” the relevant Reference Time in respect of any determination;
- (b) in the case of clause (b) or (c) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (c) in the case of clause (d) of the definition of “Benchmark Transition Event,” the date of such public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for purposes of such determination.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) if the Benchmark is Three-Month Term SOFR, (i) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (ii) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (iii) the Calculation Agent determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;

- (b) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (d) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“Board of Directors” means, as to any Person, the board of directors, or similar governing body, of such Person or any duly authorized committee thereof.

“Board Resolution” means one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, delivered to the Trustee.

“Business Day” means any day other than a Saturday, Sunday or other day on which banking institutions in the State of Illinois or the State of New York are authorized or obligated by law, regulation or executive order to close.

“Calculation Agent” means such bank or other entity (which may be the Company or one of its Affiliates) as may be appointed by the Company, in writing, to act as Calculation Agent for the Subordinated Notes during the Floating Rate Period, and who has accepted such appointment in writing.

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

“Company” is defined in the preamble to this Indenture.

“Company Request” and “Company Order” mean, respectively, a written request or order, as the case may be, signed on behalf of the Company by an Authorized Officer and delivered to the Trustee.

“Compounded SOFR” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Floating Interest Period) being established by the Company in accordance with:

- (a) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided that*:
- (b) if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or its designee giving due consideration to any industry-accepted market practice for U.S. dollar denominated floating rate notes at such time.

For the avoidance of doubt, the calculation of Compounded SOFR will exclude the Benchmark Replacement Adjustment.

“Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.

“Corporate Trust Office” means the address of the Trustee specified in Section 1.05 or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the designated address of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“Covenant Defeasance” is defined in Section 3.02(3).

“Defaulted Interest” is defined in Section 2.10.

“Definitive Subordinated Notes” means, individually and collectively, each Restricted Definitive Subordinated Note and each Unrestricted Definitive Subordinated Note, substantially in the form of Exhibit A-1 hereto, issued under this Indenture.

“Depository” means, with respect to any Subordinated Note issuable or issued in whole or in part in global form, the Person designated as depository by the Company in accordance with this Indenture, and any and all successors thereto appointed as Depository under this Indenture. The initial Depository shall be The Depository Trust Company.

“Dollars” or “\$” means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States.

“Event of Default” is defined in Section 4.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute thereto.

“Exchange Notes” means the Subordinated Notes issued in the Exchange Offer in accordance with Section 2.08.

“Exchange Offer” has the meaning set forth in the Registration Rights Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System or any successor regulatory authority with jurisdiction over bank holding companies.

“Fixed Interest Payment Date” means March 30 and September 30 of each year, beginning March 30, 2020.

“Floating Interest Determination Date” means the date upon which the Floating Interest Rate is determined by the Calculation Agent pursuant to the Three-Month Term SOFR Conventions.

“Floating Interest Payment Date” means March 30, June 30, September 30 and December 30 of each year, beginning September 30, 2024.

“Floating Interest Period” means each three-month period beginning on each Floating Interest Payment Date.

“Floating Interest Rate” means:

- (i) initially Three-Month Term SOFR;
- (ii) notwithstanding the foregoing clause (i) of this definition:
  - (1) If the Calculation Agent determines prior to the relevant Floating Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, then the Company shall promptly provide notice of such determination to the Holder and Section 2(c) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the Floating Interest Rate payable on the Subordinated Notes during a relevant Floating Interest Period.
  - (2) However, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, but for any reason the Benchmark Replacement has not been determined as of the relevant Floating Interest Determination Date, the Floating Interest Rate for the applicable Floating Interest Period will be equal to the Floating Interest Rate on the last Floating Interest Determination Date for the Subordinated Notes, as determined by the Calculation Agent.

- (iii) If the then-current Benchmark is Three-Month Term SOFR and any of the foregoing provisions concerning the calculation of the interest rate and the payment of interest during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions (as defined below) determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply.

“FRBNY” means the Federal Reserve Bank of New York.

“FRBNY’s Website” means the website of the FRBNY at <http://www.newyorkfed.org> or any successor source.

“GAAP” means accounting principles generally accepted in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, the statements and pronouncements of the Financial Accounting Standards Board and such other statements by such other entities (including the Commission) as have been accepted by a significant segment of the accounting profession, which are applicable at the date of this Indenture, consistently applied.

“Global Subordinated Notes” means, individually and collectively, each Restricted Global Subordinated Note and each Unrestricted Global Subordinated Note, substantially in the form of Exhibit A-2 hereto, issued under this Indenture.

“Government Obligations” means securities which are direct obligations of the United States of America in each case where the payment or payments thereunder are supported by the full faith and credit of the United States of America.

“Holder” means the Person in whose name the Subordinated Note is registered in the Subordinated Note Register.

“Indenture” means this Indenture, as amended and supplemented from time to time in accordance with its terms.

“Initial Notes” means the \$72,750,000 in aggregate principal amount of the Company’s 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029 issued under this Indenture on the date hereof.

“Interest Payment Date” means either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable.

“Interpolated Benchmark” with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.



“Investment Company Event” means the receipt by the Company of a legal opinion from counsel experienced in such matters to the effect that there is more than an insubstantial risk that the Company is or, within 90 days of the date of such legal opinion will be, considered an “investment company” that is required to be registered under the Investment Company Act of 1940, as amended.

“ISDA” means the International Swaps and Derivatives Association, Inc. or any successor thereto.

“ISDA Definitions” means the 2006 ISDA Definitions published by the ISDA or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“ISDA Fallback Adjustment” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“ISDA Fallback Rate” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“Legal Defeasance” is defined in Section 3.02(2).

“Letter of Transmittal” means the letter of transmittal to be prepared by the Company and sent to all Holders for use by such Holders in connection with an Exchange Offer.

“Maturity” means the date on which the principal of a Subordinated Note or an installment of principal becomes due and payable as provided in or under this Indenture or such Subordinated Note, whether at the Stated Maturity or by an acceleration of the maturity of such Subordinated Note in accordance with the terms of such Subordinated Note, upon redemption at the option of the Company, upon repurchase or repayment or otherwise, and includes a Redemption Date for such Subordinated Note and a date fixed for the repurchase or repayment of such Subordinated Note at the option of the Holder.

“Officer” means, with respect to any Person, the chairman of the board, vice chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of such Person.

“Officers’ Certificate” means a certificate signed on behalf of the Company by two Officers of the Company, at least one of whom must be the principal executive officer, the principal financial officer or the principal accounting officer of the Company, that complies with the requirements of Section 1.02 and is delivered to the Trustee.

“Opinion of Counsel” means a written opinion from legal counsel, which opinion meets the requirements of Section 1.02. The counsel may be an employee of or counsel to the Company or any Subsidiary of the Company.

“Outstanding,” when used with respect to any Subordinated Notes, means, as of the date of determination, all such Subordinated Notes theretofore authenticated and delivered under this Indenture, except (1) any such Subordinated Note theretofore cancelled by the Trustee or the Registrar or delivered to the Trustee or the Registrar for cancellation; (2) any such Subordinated Note for whose payment at the Maturity thereof money in the necessary amount has been theretofore deposited in accordance with this Indenture (other than in accordance with Section 3.02) with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company will act as its own Paying Agent) for the Holders of such Subordinated Notes, *provided* that, if such Subordinated Notes are to be redeemed, notice of such redemption has been duly given in accordance with this Indenture or provision therefor satisfactory to the Trustee has been made; (3) any such Subordinated Note with respect to which the Company has effected Legal Defeasance or Covenant Defeasance in accordance with Section 3.02, except to the extent provided in Section 3.02; and (4) any such Subordinated Note that has been paid in accordance with Section 2.09 or in exchange for or in lieu of which other Subordinated Notes have been authenticated and delivered under this Indenture, unless there will have been presented to the Trustee proof satisfactory to the Trustee that such Subordinated Note is held by a bona fide purchaser in whose hands such Subordinated Note is a valid obligation of the Company; *provided, however*, in all cases, that in determining whether the Holders of the requisite principal amount of Outstanding Subordinated Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Subordinated Notes owned by the Company or any Affiliate of the Company will be disregarded and deemed not to be Outstanding. Subordinated Notes so owned that will have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Subordinated Notes and that the pledgee is not the Company or an Affiliate of the Company.

“Participating Broker-Dealer” has the meaning set forth in the Registration Rights Agreement.

“Paying Agent” is defined in Section 2.06.

“Person” mean any individual, corporation, partnership, association, limited liability company, other company, statutory trust, business trust, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment,” with respect to any Subordinated Note, means the place or places where the principal of, or interest on, such Subordinated Note are payable as provided in or under this Indenture or such Subordinated Note.

“Private Placement Legend” means the legend set forth in Section 2.04 of this Indenture to be placed on all Subordinated Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

“Purchase Agreement” means the Subordinated Note Purchase Agreement, dated as of September 20, 2019, by and among the Company and the purchasers identified therein.

“Redemption Date” with respect to any Subordinated Note or portion thereof to be redeemed, means the date fixed for such redemption by or under this Indenture or such Subordinated Note.

“Redemption Price” with respect to any Subordinated Note or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or under this Indenture or such Subordinated Note.

“Reference Time” with respect to any determination of a Benchmark means (1) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (2) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.

“Registrar” is defined in Section 2.06.

“Registration Rights Agreement” means the Registration Rights Agreement in the form attached as Exhibit B to the Purchase Agreement, dated as of the date of this Indenture, by and among the Company and the purchasers identified therein.

“Regular Record Date,” with respect to any Interest Payment Date, means the close of business on the fifteenth calendar day prior to such Interest Payment Date, without regard to whether the Regular Record Date is a Business Day.

“Relevant Governmental Body” means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.

“Responsible Officer” means, when used with respect to the Trustee, any officer assigned to the Corporate Trust Office who has direct responsibility for the administration of this Indenture and, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such Person’s knowledge of and familiarity with the particular subject.

“Restricted Definitive Subordinated Note” means a Definitive Subordinated Note bearing, or that is required to bear, the Private Placement Legend.

“Restricted Global Subordinated Note” means a Global Subordinated Note bearing, or that is required to bear, the Private Placement Legend,

“Restricted Subordinated Note” means a Restricted Global Subordinated Note or a Restricted Definitive Subordinated Note.

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, or any successor statute thereto.

“Senior Indebtedness” means the principal of, and premium, if any, and interest, including interest accruing after the commencement of any bankruptcy proceeding relating to the Company, on, or substantially similar payments the Company makes in respect of the following categories of debt, whether that debt was outstanding on the date of execution of this Indenture or thereafter incurred, created or assumed: (1) all indebtedness of the Company for borrowed money, whether or not evidenced by notes, debentures, bonds, securities or other similar instruments issued under the provisions of any indenture, fiscal agency agreement, debenture or note purchase agreement or other agreement, including any senior debt securities that may be offered; (2) indebtedness of the Company for money borrowed or represented by purchase money obligations, as defined below; (3) the Company’s obligations as lessee under leases of property whether made as part of a sale and leaseback transaction to which it is a party or otherwise; (4) reimbursement and other obligations relating to letters of credit, bankers’ acceptances and similar obligations and direct credit substitutes; (5) all obligations of the Company in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity contracts and other similar arrangements; (6) all of the Company’s obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business; (7) any other obligation of the Company to its general creditors; (8) all obligations of the type referred to in clauses (1) through (7) of other persons for the payment of which the Company is liable contingently or otherwise to pay or advance money as obligor, guarantor, endorser or otherwise; (9) all obligations of the types referred to in clauses (1) through (8) of other persons secured by a lien on any property or asset of the Company; and (10) deferrals, renewals or extensions of any of the indebtedness or obligations described above; *provided, however*, that “Senior Indebtedness” does not include: (a) the subordinated notes of the Company issued in June 2015 and October 2017, and in each case any subordinated notes issued in exchange therefor or upon transfer thereof, in each case that are outstanding as of the date hereof or that are issued in exchange for or upon transfer of such subordinated notes after the date hereof, (b) the subordinated debt securities, including, without limitation, any subordinated debentures or junior subordinated debentures, of the Company underlying trust preferred securities issued by subsidiary trusts of the Company that are outstanding as of the date hereof or that are issued after the date hereof by a subsidiary trust of the Company; (c) any indebtedness, obligation or liability that is subordinated to indebtedness, obligations or liabilities of the Company to substantially the same extent as or to a greater extent than the Subordinated Notes are subordinated, including, without limitation, the Company’s 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034; and (d) any Subordinated Notes issued under this Indenture and, unless expressly provided in the terms thereof, any indebtedness of the Company to its Subsidiaries.

As used above, the term “purchase money obligations” means indebtedness, obligations evidenced by a note, debenture, bond or other instrument, whether or not secured by a lien or other security interest, issued to evidence the obligation to pay or a guarantee of the payment of, and any deferred obligation for the payment of, the purchase price of property but excluding indebtedness or obligations for which recourse is limited to the property purchased, issued or assumed as all or a part of the consideration for the acquisition of property or services, whether by purchase, merger, consolidation or otherwise, but does not include any trade accounts payable as set forth in clause (6) above.

“Significant Subsidiary” means any Subsidiary of the Company that is a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X promulgated by the Commission (as such rule is in effect on the date of this Indenture).

“SOFR” means the daily Secured Overnight Financing Rate provided by the FRBNY, as the administrator of the benchmark (or a successor administrator), on the FRBNY’s Website.

“Special Record Date” for the payment of any Defaulted Interest on any Subordinated Note means a date fixed in accordance with Section 2.10.

“Stated Maturity” means September 30, 2029.

“Subordinated Note” or “Subordinated Notes” means the Initial Notes and the Exchange Notes and, more particularly, any Subordinated Note authenticated and delivered under this Indenture, including those Subordinated Notes issued or authenticated upon transfer, replacement or exchange.

“Subordinated Note Register” is defined in Section 2.06.

“Subordination Provisions” means the provisions contained in Article XI or any provisions with respect to subordination contained in the Subordinated Notes.

“Subsidiary” means a corporation, a partnership, business or statutory trust or a limited liability company, a majority of the outstanding voting equity securities or a majority of the voting membership or partnership interests, as the case may be, of which is owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries of the Company. For the purposes of this definition, “voting equity securities” means securities having voting power for the election of directors, managers, managing partners or trustees, as the case may be, whether at all times or only so long as no senior class of stock has voting power by reason of any contingency.

“Tax Event” means the receipt by the Company of a legal opinion from counsel experienced in such matters to the effect that, as a result of a change in law on or after the date hereof, there is more than an insubstantial risk that interest paid by the Company on the Subordinated Notes is not, or, within 90 days of the date of such legal opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Administrator” means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or a successor administrator).

“Three-Month Term SOFR” means the greater of: (i) the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions; and (ii) zero percent (0.00%).

“Three-Month Term SOFR Conventions” means any determination, decision or election by the Calculation Agent with respect to any technical, administrative or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of “Floating Interest Period”, timing and frequency of determining Three-Month Term SOFR with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent decides may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).

“Tier 2 Capital” means Tier 2 capital for purposes of capital adequacy regulations of the Federal Reserve Board, as then in effect and applicable to the Company.

“Tier 2 Capital Event” means the receipt by the Company of a legal opinion from counsel experienced in such matters to the effect that, as a result of any change, event, occurrence, circumstance or effect occurring on or after the date hereof, the Subordinated Notes do not constitute, or within 90 days of the date of such legal opinion will not constitute, Tier 2 Capital (or its then equivalent if the Company were subject to such capital requirement).

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended.

“Trustee” means UMB Bank National Association, as trustee, until a successor replaces it in accordance with the provisions of this Indenture and thereafter means the successor serving hereunder.

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“United States” means the United States of America (including the states thereof and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

“Unrestricted Definitive Subordinated Note” means a Definitive Subordinated Note that does not bear, and is not required to bear, the Private Placement Legend.

“Unrestricted Global Subordinated Note” means a Global Subordinated Note that does not bear, and is not required to bear, the Private Placement Legend.

#### Section 1.02 Compliance Certificates and Opinions.

Except as otherwise expressly provided in or under this Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company will furnish to the Trustee an Officers’ Certificate stating that, in the opinion of the signers, all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Each certificate or opinion with respect to which compliance with a condition provided for in this Indenture (other than an Officers' Certificate provided under Section 9.08) must comply with the provisions of Section 314(e) of the Trust Indenture Act and must include:

- (1) a statement that the person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such condition has been satisfied; and
- (4) a statement as to whether or not, in the opinion of such person, such condition has been satisfied.

Section 1.03 Form of Documents Delivered to Trustee.

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, but without investigation, should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based is 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 stating that the information with respect to such factual matters is in the possession of the Company unless such counsel knows, or in the exercise of reasonable care, but without investigation, should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture or any Subordinated Note, they may, but need not, be consolidated and form one instrument.

Section 1.04      Acts of Holders.

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or under this Indenture to be made, given 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. Except as herein otherwise expressly provided, such action will become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (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, or of the holding by any Person of a Subordinated Note, will be sufficient for any purpose of this Indenture and (subject to Section 5.01) conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section.

(2) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine, and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(3) The ownership, principal amount and serial numbers of Subordinated Notes held by any Person, and the date of the commencement and the date of the termination of holding the same, will be proved by the Subordinated Note Register.

(4) The Company may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, any such record date will be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation. If a record date is fixed, the Holders on such record date, and only such Persons, will be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action will be valid or effective if made, given or taken more than 90 days after such record date.

(5) Any effective request, demand, authorization, direction, notice, consent, waiver or other Act by the Holder of any Subordinated Note will bind every future Holder of the same Subordinated Note and the Holder of every Subordinated Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee, any Registrar, any Paying Agent or the Company in reliance thereon, whether or not notation of such Act is made upon such Subordinated Note.



(6) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so in accordance with such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount in accordance with this paragraph will have the same effect as if given or taken by separate Holders of each such different part.

(7) Without limiting the generality of this Section 1.04, a Holder, including a Depositary that is a Holder of a Global Subordinated Note, may make, give or take, by a proxy or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or under this Indenture or the Subordinated Notes to be made, given or taken by Holders, and a Depositary that is a Holder of a Global Subordinated Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Subordinated Note through such Depositary's Applicable Procedures. The Company may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Subordinated Note entitled under the Applicable Procedures of such Depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, will be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action will be valid or effective if made, given or taken more than 90 days after such record date.

Promptly upon any record date being set in accordance with this Section 1.04, the Company, at its own expense, will cause notice of the record date, the proposed action by Holders and the expiration date to be given to the Trustee in writing and the Holders in the manner set forth in Section 1.05.

Section 1.05            Required Notices or Demands.

Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in Person or delivered by registered or certified mail (return receipt requested), facsimile or overnight air courier guaranteeing next day delivery, to the other's address:

If to the Company;

Midland States Bancorp, Inc.  
1201 Network Centre Drive  
Effingham, Illinois 62401  
Attention:     Jeffrey G. Ludwig  
                         Chief Executive Officer  
Facsimile:     (217) 342-9462

If to the Trustee:

UMB Bank National Association  
5555 San Felipe, Suite 870  
Houston, Texas 77056  
Attention:     Mauri J. Cowen  
Facsimile     No.: 214-389-5949

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if delivered by mail; on the first Business Day after being sent, if sent by facsimile and the sender receives confirmation of successful transmission; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice required or permitted to be given to a Holder under the provisions of this Indenture will be deemed to be properly delivered by being deposited postage prepaid in a post office letter box in the United States addressed to such Holder at the address of such Holder as shown on the Subordinated Note Register. Any report in accordance with Section 313 of the Trust Indenture Act will be transmitted in compliance with subsection (c) therein. If the Company delivers a notice or communication to Holders, the Company will deliver a copy to the Trustee at the same time.

In any case where notice to Holders of Subordinated Notes is delivered by mail, neither the failure to deliver such notice, nor any defect in any notice so delivered, to any particular Holder of a Subordinated Note will affect the sufficiency of such notice with respect to other Holders of Subordinated Notes. Any notice that is delivered in the manner herein provided will be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it will be impracticable to give such notice by mail, then such notification as will be made with the approval of the Trustee will constitute a sufficient notification for every purpose hereunder.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Holders of Subordinated Notes will be filed with the Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Notwithstanding any other provision herein, where this Indenture provides for notice to any Holder of a Global Subordinated Note, or of an interest therein, such notice will be sufficiently given if given to the Depositary for such Global Subordinated Note (or its designee) according to the Applicable Procedures of such Depositary prescribed for giving such notice.

Section 1.06      Incorporation by Reference of Trust Indenture Act; Conflicts.

Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. The Trust Indenture Act term “obligor” used in this Indenture means the Company and any successor obligor upon the Subordinated Notes.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by Commission rule under the Trust Indenture Act have the meanings so assigned to them as of the date of this Indenture. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture that is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision will control. If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Section 318(c) of the Trust Indenture Act, the duties imposed by Section 318(c) of the Trust Indenture Act will control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the provisions of the Trust Indenture Act will be deemed to apply to this Indenture as so modified or will be excluded, as the case may be.

Section 1.07            Effect of Headings and Table of Contents.

The Article and Section headings in this Indenture and the Table of Contents are for convenience only and will not affect the construction of this Indenture.

Section 1.08            Successors and Assigns.

All the covenants, stipulations, promises and agreements in this Indenture by or on behalf of the Company or the Trustee will bind its respective successors and permitted assigns, whether so expressed or not. The Company may assign its rights under this Indenture, but may not assign its obligations under this Indenture, other than in connection with a transaction permitted by Article VII hereof, or as consented to by the Holder of each Outstanding Subordinated Note.

Section 1.09            Severability.

In case any provision in this Indenture or any Subordinated Note will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not, to the fullest extent permitted by law, in any way be affected or impaired thereby.

Section 1.10            Benefits of Indenture.

Nothing in this Indenture or any Subordinated Note, express or implied, will give to any Person, other than the parties hereto, any Registrar, any Paying Agent and their respective successors hereunder and the Holders of Subordinated Notes, and the holders of Senior Indebtedness, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.11            Governing Law.

This Indenture and the Subordinated Notes will be deemed to be a contract made under the laws of the State of New York and will be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any laws or principles of conflict of laws that would apply the laws of a different jurisdiction.

Section 1.12      Legal Holidays.

Unless otherwise specified in or under this Indenture or any Subordinated Notes, in any case where any Interest Payment Date, Stated Maturity or Maturity of, or any other day on which a payment is due with respect to, any Subordinated Note will be a day that is not a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or any Subordinated Note other than a provision in any Subordinated Note or in the Board Resolution, Officers' Certificate or supplemental indenture establishing the terms of any Subordinated Note that specifically states that such provision will apply in lieu hereof) payment need not be made at such Place of Payment on such date, but such payment may be made on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, at the Stated Maturity or Maturity or on any such other payment date, as the case may be, and no interest will accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date, Stated Maturity, Maturity or other payment date, as the case may be, to the next succeeding Business Day,

Section 1.13      Counterparts; Electronic Transmission.

This Indenture may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon will, for all purposes, be deemed originals.

Section 1.14      Immunity of Certain Persons.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Subordinated Note, or because of any indebtedness evidenced thereby, will be had against any past, present or future shareholder, employee, officer or director, as such, of the Company or Trustee or of any predecessor or successor, either directly or through the Company or Trustee or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Subordinated Notes by the Holders and as part of the consideration for the issue of the Subordinated Notes.

Section 1.15      Waiver of Jury Trial.

EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SUBORDINATED NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 1.16      Force Majeure.

In no event will the 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 Trustee will use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 1.17 No Sinking Fund.

The Subordinated Notes are not entitled to the benefit of any sinking fund.

Section 1.18 Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “including” means including without limitation;
- (6) “will” will be interpreted to express a command;
- (7) provisions apply to successive events and transactions;
- (8) references to sections of, or rules under, the Securities Act will be deemed to include substitute, replacement or successor sections or rules adopted by the Commission from time to time;
- (9) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture; and
- (10) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

**ARTICLE II**  
**THE SUBORDINATED NOTES**

Section 2.01 Forms Generally.

The Subordinated Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A-1 and Exhibit A-2, as applicable, which are a part of this Indenture. The Subordinated Notes may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). The Company will provide any such notations, legends or endorsements to the Trustee in writing. Each Subordinated Note will be dated the date of its authentication. The terms and provisions contained in the Subordinated Notes will constitute, and are hereby expressly made a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Subordinated Note irreconcilably conflicts with the express provisions of this Indenture, the provisions of this Indenture will govern and be controlling.

Section 2.02      Definitive Subordinated Notes.

The Initial Notes will be issued initially in the form of one or more Definitive Subordinated Notes, unless, before the issuance of such Exchange Notes, the Company has determined that the Initial Notes may be represented by Global Subordinated Notes and has so notified the Trustee, in which event the Initial Notes will be issued in the form of one or more Global Subordinated Notes. The Exchange Notes will also be issued initially in the form of one or more Definitive Subordinated Notes, unless, before the issuance of such Exchange Notes, the Company has determined that the Subordinated Notes may be represented by Global Subordinated Notes and has so notified the Trustee, in which event the Exchange Notes will be issued in the form of one or more Global Subordinated Notes. Except as provided in Section 2.07, Holders of Definitive Subordinated Notes will not be entitled to transfer Definitive Subordinated Notes in exchange for beneficial interests in Global Subordinated Notes, and owners of beneficial interests in Global Subordinated Notes will not be entitled to receive physical delivery of Definitive Subordinated Notes.

Section 2.03      Global Subordinated Notes.

Each Global Subordinated Note issued under this Indenture will be deposited with the Trustee at its Corporate Trust Office, as custodian for the Depository, and registered in the name of the Depository or the nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of any Global Subordinated Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository as hereinafter provided. Any adjustment of the aggregate principal amount of a Global Subordinated Note to reflect the amount of any increase or decrease in the amount of outstanding Subordinated Notes represented thereby will be made by the Trustee in accordance with written instructions given by the Holder thereof as required by Section 2.07 hereof and will be made on the records of the Trustee and the Depository.

Section 2.04      Restricted Subordinated Notes.

Each Restricted Definitive Subordinated Note and Restricted Global Subordinated Note will bear a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER; (B) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).”

The Private Placement Legend set forth above will be removed and a new Subordinated Note of like tenor and principal amount without such Private Placement Legend will be executed by the Company, and upon written request of the Company (together with an Officers' Certificate and an Opinion of Counsel) given at least three Business Days prior to the proposed authentication date, the Trustee will authenticate and deliver such new Subordinated Note to the respective Holder, if legal counsel to the Holder or owner of beneficial interests requesting the removal of such Private Placement Legend deliver to the Trustee, any Registrar and Paying Agent (if a different Person than the Trustee) and the Company an opinion of counsel in compliance with this Indenture and additionally opining that the restrictive legend can be removed in connection with the transfer in accordance with the Securities Act.

Section 2.05            Execution and Authentication.

Subordinated Notes will be executed on behalf of the Company by any Authorized Officer and may (but need not) have the Company's corporate seal or a facsimile thereof reproduced thereon. The signature of an Authorized Officer on the Subordinated Notes may be manual or facsimile. Subordinated Notes bearing the manual or facsimile signatures of individuals who were at the time of execution Authorized Officers of the Company will, to the fullest extent permitted by law, bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Subordinated Notes or did not hold such offices at the date of such Subordinated Notes.

The Trustee or an Authenticating Agent will authenticate and deliver the Initial Notes for original issue in an initial aggregate principal amount of up to \$72,750,000 upon one or more Company Orders and an Opinion of Counsel. In addition, the Trustee or an Authenticating Agent will upon receipt of a Company Order, Opinion of Counsel and Officers' Certificate authenticate and deliver any Exchange Notes for an initial aggregate principal amount not to exceed \$72,750,000 specified in such Company Order for Exchange Notes issued hereunder. The aggregate principal amount of the Outstanding Subordinated Notes to be issued hereunder may be increased at any time hereafter and the series may be reopened for issuances of additional Subordinated Notes upon Company Order without the consent of any Holder. The Subordinated Notes issued on the date hereof and any such additional Subordinated Notes that may be issued hereafter shall be part of the same series of Subordinated Notes for all purposes under the Indenture. Unless the context otherwise requires, the initial Subordinated Notes and the Exchange Notes shall constitute one series for all purposes under the Indenture, including with respect to any amendment, waiver, acceleration or other Act of the Holders or upon redemption of the Subordinated Notes. The Subordinated Notes will be issued only in registered form without coupons and in minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof.

The Trustee will not be required to authenticate any Subordinated Notes if the issue of such Subordinated Notes under this Indenture will affect the Trustee's own rights, duties or immunities under the Subordinated Notes and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

No Subordinated Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Subordinated Note a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee or by the Authenticating Agent by the manual signature of one of its authorized signatories. Such certificate upon any Subordinated Note will be conclusive evidence, and the only evidence, that such Subordinated Note has been duly authenticated and delivered hereunder.

Section 2.06            Registrar and Paying Agent.

The Company will maintain an office or agency where Subordinated Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Subordinated Notes may be presented for payment ("Paying Agent"). The Registrar will keep a register of the Subordinated Notes ("Subordinated Note Register") and of their transfer and exchange. The registered Holder of a Subordinated Note will be treated as the owner of the Subordinated Note for all purposes. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder; provided that no such removal or replacement will be effective until a successor Paying Agent or Registrar will have been appointed by the Company and will have accepted such appointment. The Company will notify the Trustee in writing of the name and address of any Registrar or Paying Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee will act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints the Trustee to act as the Paying Agent and Registrar for the Subordinated Notes and, in the event that any Subordinated Notes are issued in global form, to initially act as custodian with respect to the Global Subordinated Notes. In the event that the Trustee will not be or will cease to be Registrar with respect to the Subordinated Notes, it will have the right to examine the Subordinated Note Register at all reasonable times. There will be only one Subordinated Note Register.

Section 2.07            Registration of Transfer and Exchange.

(1)                    Except as otherwise provided in or under this Indenture, upon surrender for registration of transfer of any Subordinated Note, the Company will execute, and the Trustee will, upon receipt of a Company Order, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Subordinated Notes denominated as authorized in or under this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.



Except as otherwise provided in or under this Indenture, at the option of the Holder, Subordinated Notes may be exchanged for other Subordinated Notes containing identical terms and provisions, in any authorized denominations (minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof), and of a like aggregate principal amount, upon surrender of the Subordinated Notes to be exchanged at any office or agency for such purpose. Whenever any Subordinated Notes are so surrendered for exchange, the Company will execute, and the Trustee will authenticate and deliver, subject to the terms hereof, the Subordinated Notes that the Holder making the exchange is entitled to receive.

All Subordinated Notes issued upon any registration of transfer or exchange of Subordinated Notes will be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Subordinated Notes surrendered upon such registration of transfer or exchange.

Every Subordinated Note presented or surrendered for registration of transfer or for exchange or redemption will (if so required by the Company or the Registrar for such Subordinated Note) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar for such Subordinated Note duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge will be made for any registration of transfer or exchange of Subordinated Notes, or any redemption or repayment of Subordinated Notes, or any conversion or exchange of Subordinated Notes for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Subordinated Notes from the Holder requesting such transfer or exchange.

Except as otherwise provided in or under this Indenture, the Company will not be required (i) to issue, register the transfer of or exchange any Subordinated Notes during a period beginning at the opening of business 15 days before the day of the selection for redemption of Subordinated Notes under Section 10.03 and ending at the close of business on the day of such selection, or (ii) to register the transfer of or exchange any Subordinated Note, or portion thereof, so selected for redemption, except in the case of any Subordinated Note to be redeemed in part, the portion thereof not to be redeemed.

Any Registrar (if not the Trustee) appointed in accordance with Section 2.06 hereof will provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Subordinated Notes upon transfer or exchange of Subordinated Notes. No Registrar will be required to make registrations of transfer or exchange of Subordinated Notes during any periods designated in the Subordinated Notes or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

The Trustee and the Registrar will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Subordinated Note (including any transfers between or among Depository participants or beneficial owners of interests in any Global Subordinated Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture.

Neither the Trustee nor any Paying Agent will have any responsibility for any actions taken or not taken by the Depositary.

(2) When Definitive Subordinated Notes are presented by a Holder to the Registrar with a request to register the transfer of such Definitive Subordinated Notes or to exchange such Definitive Subordinated Notes for an equal principal amount of Definitive Subordinated Notes of other authorized denominations, the Registrar will register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided, however*, that the Definitive Subordinated Notes surrendered for transfer or exchange will be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(3) A Global Subordinated Note may not be transferred except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Subordinated Notes will be exchanged by the Company for Definitive Subordinated Notes if: (i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Subordinated Note or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor depositary is not appointed by the Company within 90 days, (ii) the Company determines that the Subordinated Notes are no longer to be represented by Global Subordinated Notes and so notifies the Trustee in writing, or (iii) an Event of Default has occurred and is continuing with respect to the Subordinated Notes and the Depositary or its participant(s) has requested the issuance of Definitive Subordinated Notes.

Any Global Subordinated Note exchanged in accordance with clause (i) or (ii) above will be so exchanged in whole and not in part, and any Global Subordinated Note exchanged in accordance with clause (iii) above may be exchanged in whole or from time to time in part as directed by the Depositary.

Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Definitive Subordinated Notes will be issued in fully registered form, without interest coupons, will have an aggregate Principal Amount equal to that of the Global Subordinated Note or portion thereof to be so exchanged, will be registered in such names and be in such authorized denominations as the Depositary will instruct the Trustee in writing and will bear such legends as provided herein. Global Subordinated Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.09 hereof. Every Subordinated Note authenticated and delivered in exchange for, or in lieu of, a Global Subordinated Note or any portion thereof, in accordance with this Section 2.07 or Section 2.09 hereof, will be authenticated and delivered in the form of, and will be, a Global Subordinated Note, except as otherwise provided herein. A Global Subordinated Note may not be exchanged for another Subordinated Note other than as provided in this Section 2.07(3); however, beneficial interests in a Global Subordinated Note may be transferred and exchanged as provided in Section 2.07(4) hereof.

Any Global Subordinated Note to be exchanged in whole will be surrendered by the Depositary to the Trustee. With regard to any Global Subordinated Note to be exchanged in part, either such Global Subordinated Note will be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Subordinated Note, the principal amount thereof will be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee will authenticate and deliver the Subordinated Note issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(4) The transfer and exchange of beneficial interests in the Global Subordinated Notes will be effected through the Depositary in accordance with the Applicable Procedures and this [Section 2.07](#).

(5) A Definitive Subordinated Note may not be exchanged for a beneficial interest in a Global Subordinated Note unless the Company determines that the Subordinated Notes may be represented by Global Subordinated Notes and so notifies the Trustee. After the Company has determined that the Subordinated Notes may be represented by Global Subordinated Notes and so notifies the Trustee in writing, then upon receipt by the Trustee of a Definitive Subordinated Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with written instructions from such Holder directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Subordinated Note to reflect an increase in the aggregate principal amount of the Subordinated Notes represented by the Global Subordinated Note, such instructions to contain information regarding the Depositary account to be credited with such increase, the Trustee will cancel such Definitive Subordinated Note and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Subordinated Notes represented by the Global Subordinated Note to be increased by the aggregate principal amount of the Definitive Subordinated Note to be exchanged, and will credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Subordinated Note equal to the principal amount of the Definitive Subordinated Note so cancelled. If no Global Subordinated Notes are then outstanding, the Company will issue and the Trustee will authenticate, upon Company Order, a new Global Subordinated Note in the appropriate principal amount.

(6) At such time as all beneficial interests in a particular Global Subordinated Note have been exchanged for Definitive Subordinated Notes or a particular Global Subordinated Note has been repurchased or canceled in whole and not in part, each such Global Subordinated Note will be returned to or retained and canceled by the Trustee in accordance with [Section 2.12](#) hereof. At any time prior to such cancellation, if any beneficial interest in a Global Subordinated Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Subordinated Note or for Definitive Subordinated Notes, the principal amount of Subordinated Notes represented by such Global Subordinated Note will be reduced accordingly by adjustments made on the records of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Subordinated Note, such other Global Subordinated Note will be increased accordingly by adjustments made on the records of the Trustee to reflect such increase.

(7) No Restricted Subordinated Note will be transferred or exchanged except in compliance with the Private Placement Legend or as provided in accordance with Section 2.08. In addition to the provisions for transfer and exchange set forth in this Section 2.07, the Trustee, any Registrar and Paying Agent (if a different Person than the Trustee) and the Company may, prior to effecting any requested transfer or exchange of any Restricted Subordinated Notes, other than an exchange in accordance with Section 2.08, require that legal counsel to the Holder or owner of beneficial interests requesting such transfer or exchange deliver to the Trustee, any Registrar and Paying Agent (if a different Person than the Trustee) and the Company, an Opinion of Counsel in compliance with this Indenture and additionally opining that the transfer or exchange is in compliance with the requirements of the Private Placement Legend and that the Subordinated Note issued to the transferee or in exchange for the Restricted Subordinated Note may be issued free of the Private Placement Legend. Any untransferred or unexchanged balance of a Restricted Subordinated Note will be reissued to the Holder with the Private Placement Legend, unless the Private Placement Legend may be omitted in accordance with Section 2.04, as evidenced by the Opinion of Counsel.

Section 2.08      Exchange Offer.

Upon the occurrence of an Exchange Offer in accordance with the Registration Rights Agreement, the Company will issue and, upon receipt of a Company Order in accordance with Section 2.05 hereof, the Trustee will authenticate (i) Unrestricted Definitive Subordinated Notes in aggregate principal amounts equal to the principal amounts of the Restricted Definitive Subordinated Notes tendered in such Exchange Offer for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the applicable Exchange Notes and (z) they are not Affiliates of the Company, and accepted for exchange in such Exchange Offer or, if permitted by the Company, (ii) one or more Unrestricted Global Subordinated Notes in an aggregate principal amount equal to the aggregate principal amount of the beneficial interests in the Restricted Global Subordinated Notes tendered in such Exchange Offer for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the applicable Exchange Notes and (z) they are not Affiliates of the Company, and accepted for exchange in such Exchange Offer. Concurrently with the issuance of such Unrestricted Global Subordinated Notes upon exchange of Restricted Global Subordinated Notes, the Trustee will cause the aggregate principal amount of the applicable Restricted Global Subordinated Notes to be reduced accordingly, and the Company will execute and the Trustee will authenticate and deliver to the Persons designated by the Holders of Restricted Definitive Subordinated Notes so accepted Unrestricted Definitive Subordinated Notes in the applicable principal amount. Any Subordinated Notes that remain outstanding after the consummation of such Exchange Offer, and Exchange Notes issued in connection with such Exchange Offer, will be treated as a single class of securities under this Indenture.

Section 2.09 Mutilated, Destroyed, Lost and Stolen Subordinated Notes.

If any mutilated Subordinated Note is surrendered to the Trustee, subject to the provisions of this Section 2.09, the Company will execute and the Trustee will authenticate and deliver in exchange therefor a new Subordinated Note containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding.

If there be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Subordinated Note, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Subordinated Note has been acquired by a bona fide purchaser, the Company will execute and, upon the Company's written instruction the Trustee will authenticate and deliver, in exchange for or in lieu of any such destroyed, lost or stolen Subordinated Note, a new Subordinated Note containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding.

Notwithstanding the foregoing provisions of this Section 2.09, in case the outstanding principal balance of any mutilated, destroyed, lost or stolen Subordinated Note has become or is about to become due and payable, or is about to be redeemed by the Company pursuant to Article X hereof, the Company in its discretion may, instead of issuing a new Subordinated Note, pay or redeem such Subordinated Note, as the case may be.

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

Every new Subordinated Note issued in accordance with this Section in lieu of any destroyed, lost or stolen Subordinated Note will constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Subordinated Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Subordinated Notes duly issued hereunder.

The provisions of this Section, as amended or supplemented in accordance with this Indenture with respect to particular Subordinated Notes or generally, will (to the extent lawful) be exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Subordinated Notes.

Section 2.10 Payment of Interest; Rights to Interest Preserved.

Any interest on any Subordinated Note that will be payable, and punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name such Subordinated Note is registered on the Regular Record Date for such Interest Payment Date.

Any interest on any Subordinated Note that will be payable, but will not be punctually paid or duly provided for, on any Interest Payment Date for such Subordinated Note (herein called "Defaulted Interest") will cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Subordinated Note will be registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which will be fixed in the following manner:

The Company will notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Subordinated Note and the date of the proposed payment, and at the same time the Company will deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or will make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this clause provided. Thereupon, the Company will fix or cause to be fixed a Special Record Date for the payment of such Defaulted Interest, which will be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company), will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be delivered to the Holder of such Subordinated Note at the Holder's address as it appears in the Subordinated Note Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been delivered as aforesaid, such Defaulted Interest will be paid to the Person in whose name such Subordinated Note will be registered at the close of business on such Special Record Date and will no longer be payable under the following clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Subordinated Note may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment under this Clause, such payment will be deemed practicable by the Trustee.

Unless otherwise provided in or under this Indenture or the Subordinated Notes, at the option of the Company, interest on Subordinated Notes that bear interest may be paid by mailing a check to the address of the Person entitled thereto as such address will appear in the Subordinated Note Register or by transfer to an account maintained by the payee with a bank located in the United States.

Subject to the foregoing provisions of this Section and [Section 2.07](#), each Subordinated Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Subordinated Note will carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Subordinated Note.

Section 2.11 Persons Deemed Owners.

Prior to due presentment of a Subordinated Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Subordinated Note is registered in the Subordinated Note Register as the owner of such Subordinated Note for the purpose of receiving payment of principal of, and (subject to Section 2.07 and Section 2.10) interest on, such Subordinated Note and for all other purposes whatsoever, whether or not any payment with respect to such Subordinated Note will be overdue, and neither the Company, the Trustee or any agent of the Company or the Trustee will be affected by notice to the contrary.

No holder of any beneficial interest in any Global Subordinated Note held on its behalf by a Depository will have any rights under this Indenture with respect to such Global Subordinated Note, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Subordinated Note for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Subordinated Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, nothing herein will prevent the Company, the Trustee, any Paying Agent or the Registrar from giving effect to any written certification, proxy or other authorization furnished by the applicable Depository, as a Holder, with respect to a Global Subordinated Note or impair, as between such Depository and the owners of beneficial interests in such Global Subordinated Note, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as the Holder of such Global Subordinated Note.

Section 2.12 Cancellation.

All Subordinated Notes surrendered for payment, redemption, registration of transfer or exchange will, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Subordinated Note, as well as Subordinated Notes surrendered directly to the Trustee for any such purpose, will be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Subordinated Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Subordinated Notes so delivered will be cancelled promptly by the Trustee. No Subordinated Notes will be authenticated in lieu of or in exchange for any Subordinated Notes cancelled as provided in this Section, except as expressly permitted by or under this Indenture. All cancelled Subordinated Notes held by the Trustee will be disposed of in accordance with its procedure for the disposition of cancelled Subordinated Notes, and the Trustee upon the written request of the Company will deliver to the Company a certificate of such disposition, unless by a Company Order the Company shall direct that cancelled Subordinated Notes shall be returned to the Company.

Section 2.13 Computation of Interest.

From and including the original issue date of the Subordinated Notes, or from the most recent date to which interest has been paid or duly provided for, to but excluding September 30, 2024, the rate at which the Subordinated Notes shall bear interest shall be 5.00% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable semiannually in arrears on each Fixed Interest Payment Date, beginning on March 30, 2020. From and including September 30, 2024, to but excluding the Stated Maturity or at any Redemption Date, the rate at which the Subordinated Notes shall bear interest shall be a floating rate per annum, reset quarterly, equal to the Floating Interest Rate determined by the Calculation Agent on the Floating Interest Determination Date for the applicable Floating Interest Period plus 361 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on each Floating Interest Payment Date. Any payment of principal of or interest on the Subordinated Notes that would otherwise become due and payable on a day which is not a Business Day will become due and payable on the next succeeding Business Day, with the same force and effect as if made on the date for payment of such principal or interest, and no interest will accrue in respect of such payment for the period after such day.

Section 2.14 CUSIP Numbers.

The Company may issue the Subordinated Notes with one or more “CUSIP” numbers (if then generally in use). The Company will promptly notify the Trustee in writing of any change in the CUSIP numbers. The Trustee may use “CUSIP” numbers in notices (including but not limited to notices of redemption or exchange) 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 Subordinated Notes or as contained in any notice (including any notice of redemption or exchange) and that reliance may be placed only on the other identification numbers printed on the Subordinated Notes, and any such notice will not be affected by any defect in or omission of such numbers.

**ARTICLE III**  
**SATISFACTION AND DISCHARGE OF INDENTURE**

Section 3.01 Satisfaction and Discharge.

This Indenture will cease to be of further effect, and the Trustee, on receipt of a Company Order, at the expense of the Company, will execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(1) either:

(a) all Subordinated Notes theretofore authenticated and delivered (other than (i) Subordinated Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.09 and (ii) Subordinated Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 9.03) have been delivered to the Trustee for cancellation; or

(b) all Subordinated Notes that have not been delivered to the Trustee for cancellation (i) have become due and payable, or (ii) will become due and payable at their Stated Maturity within one year, or (iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, an amount sufficient to pay and discharge the entire indebtedness on such Subordinated Notes not theretofore delivered to the Trustee for cancellation, including the principal of, and interest on, such Subordinated Notes, to the date of such deposit (in the case of Subordinated Notes which have become due and payable) or to the Maturity thereof, as the case may be;



(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Outstanding Subordinated Notes; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture with respect to the Subordinated Notes, the obligations of the Company to the Trustee under Section 5.07 and, if money will have been deposited with the Trustee in accordance with Section 3.01(1)(b), the obligations of the Company and the Trustee with respect to the Subordinated Notes under Section 3.03 and Section 9.03 will survive.

Section 3.02 Defeasance and Covenant Defeasance.

(1) The Company may at its option and at any time, elect to have Section 3.02(2) or Section 3.02(3) be applied to such Outstanding Subordinated Notes upon compliance with the conditions set forth below in this Section 3.02. Legal Defeasance and Covenant Defeasance may be effected only with respect to all, and not less than all, of the Outstanding Subordinated Notes.

(2) Upon the Company's exercise of the above option applicable to this Section 3.02(2), the Company will be deemed to have been discharged from its obligations with respect to such Outstanding Subordinated Notes on the date the conditions set forth in clause (4) of this Section 3.02 are satisfied ("Legal Defeasance"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Subordinated Notes, which will thereafter be deemed to be "Outstanding" only for the purposes of Section 3.02(5) and the other Sections of this Indenture referred to in clauses (i) through (iv) of this paragraph, and to have satisfied all of its other obligations under such Subordinated Notes and this Indenture insofar as such Subordinated Notes are concerned (and the Trustee, at the expense of the Company, will execute proper instruments acknowledging the same), except for the following which will survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Subordinated Notes to receive, solely from the trust fund described in Section 3.02(4)(a) and as more fully set forth in this Section 3.02 and Section 3.03, payments in respect of the principal of and interest, if any, on, such Subordinated Notes when such payments are due, (ii) the obligations of the Company and the Trustee with respect to such Subordinated Notes under Section 2.07, Section 2.09, Section 9.02 and Section 9.03, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 3.02 and Section 3.03. The Company may exercise its option under this Section 3.02(2) notwithstanding the prior exercise of its option under Section 3.02(3) with respect to such Subordinated Notes.

(3) Upon the Company's exercise of the above option applicable to this Section 3.02(3), the Company will be released from its obligations under Section 9.04 (except with respect to clause (i)), Section 9.05, Section 9.08 and Section 9.09 on and after the date the conditions set forth in Section 3.02(4) are satisfied ("Covenant Defeasance"), and such Subordinated Notes will thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with any such covenant, but will continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means that with respect to such Outstanding Subordinated Notes, the Company may omit to comply with, and will have no liability in respect of, any term, condition or limitation set forth in any such Section or any such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply will not constitute a default, but, except as specified above, the remainder of this Indenture and such Subordinated Notes will be unaffected thereby.

(4) The following will be the conditions to application of Section 3.02(2) or Section 3.02(3) to any Outstanding Subordinated Notes:

(a) The Company will irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 5.08 who will agree to comply with the provisions of this Section 3.02 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders, (i) an amount in Dollars, (ii) Government Obligations that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of and interest, if any, on such Subordinated Notes, money or (iii) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which will be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of and interest, if any, on, such Outstanding Subordinated Notes on the Stated Maturity of such principal or installment of principal or interest or the applicable Redemption Date, as the case may be.

(b) Such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company or any Subsidiary is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Subordinated Notes will have occurred and be continuing on the date of such deposit, and, solely in the case of Legal Defeasance under Section 3.02(2), no Event of Default, or event which with notice or lapse of time or both would become an Event of Default, under Section 4.01 will have occurred and be continuing at any time during the period ending on and including the 91<sup>st</sup> day after the date of such deposit (it being understood that this condition to Legal Defeasance under Section 3.02(2) will not be deemed satisfied until the expiration of such period).

(d) In the case of Legal Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date of this Indenture there has been a change in applicable federal income tax law, in either case to the effect that, and based thereon such opinion of independent counsel will confirm that, the Holders of such Outstanding Subordinated Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred.

(e) In the case of Covenant Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Subordinated Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred.

(f) The Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the Legal Defeasance or Covenant Defeasance, as the case may be, under this Indenture have been satisfied.

(g) If the moneys or Government Obligations or combination thereof, as the case may be, deposited under Section 3.02(4)(a) above are sufficient to pay the principal of, and interest, if any, on, such Subordinated Notes provided such Subordinated Notes are redeemed on a particular Redemption Date, the Company will have given the Trustee irrevocable instructions to redeem such Subordinated Notes on such date and to provide notice of such redemption to Holders as provided in or under this Indenture.

(h) The Trustee will have received such other documents, assurances and Opinions of Counsel as the Trustee will have reasonably required in its discretion.

(5) Subject to the provisions of the last paragraph of Section 9.03, all money and Government Obligations deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 3.02(5), the "Trustee") in accordance with Section 3.02(4)(a) in respect of any Outstanding Subordinated Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Subordinated Notes and this Indenture, to the payment, either directly or through any Paying Agent (other than the Company or any Subsidiary or Affiliate of the Company acting as Paying Agent) as the Trustee may determine in its discretion, to the Holders of all sums due and to become due thereon in respect of principal and interest but such money and Government Obligations need not be segregated from other funds, except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited in accordance with this Section 3.02 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Subordinated Notes.

Section 3.03      Application of Trust Money.

Subject to the provisions of the last paragraph of Section 9.03, all money and Government Obligations deposited with the Trustee in accordance with Section 3.01 or Section 3.02 will be held in trust and applied by the Trustee, in accordance with the provisions of such Subordinated Notes subject to discharge under Section 3.01 or Legal Defeasance or Covenant Defeasance under Section 3.02, and this Indenture, to the payment, either directly or through any Paying Agent (including the Company, acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds, except to the extent required by law.

Section 3.04      Reinstatement.

If the Trustee (or other qualifying trustee appointed in accordance with Section 3.02(4)(a)) or any Paying Agent is unable to apply any moneys or Government Obligations deposited in accordance with Section 3.01(1) or Section 3.02(4)(a) to pay any principal of, or interest, if any, on, the Subordinated Notes by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Subordinated Notes will be revived and reinstated as though no such deposit had occurred, until such time as the Trustee (or other qualifying trustee) or Paying Agent is permitted to apply all such moneys and Government Obligations to pay the principal of, and interest, if any, on the Subordinated Notes as contemplated by Section 3.01 or Section 3.02 as the case may be; *provided, however*, that if the Company makes any payment of the principal of, or interest if any on, the Subordinated Notes following the reinstatement of its obligations as aforesaid, the Company will be subrogated to the rights of the Holders of such Subordinated Notes to receive such payment from the funds held by the Trustee (or other qualifying trustee) or Paying Agent.

Section 3.05      Effect on Subordination Provisions.

The provisions of Article XI are expressly made subject to the provisions for, and to the right of the Company to effect, the satisfaction and discharge of all of the Subordinated Notes as set forth in and in accordance with Section 3.01 and the provisions for, and to the right of the Company to effect, Legal Defeasance and Covenant Defeasance of all of the Subordinated Notes as set forth in and in accordance with Section 3.02. As a result, and anything herein to the contrary notwithstanding, if the Company complies with the provisions of Section 3.01 to effect the satisfaction and discharge of the Subordinated Notes or complies with the provisions of Section 3.02 to effect the Legal Defeasance or Covenant Defeasance, upon the effectiveness of such satisfaction and discharge in accordance with Section 3.01 or of Legal Defeasance or Covenant Defeasance in accordance with Section 3.02, in the case of satisfaction and discharge in accordance with Section 3.01, or, in the case of Legal Defeasance or Covenant Defeasance in accordance with Section 3.02, the Subordinated Notes as to which Legal Defeasance or Covenant Defeasance, as the case may be, will have become effective will thereupon cease to be so subordinated in right of payment to the Senior Indebtedness and will no longer be subject to the provisions of Article XI and, without limitation to the foregoing, all moneys and Government Obligations deposited with the Trustee (or other qualifying trustee) in trust in connection with such satisfaction and discharge, Legal Defeasance or Covenant Defeasance, as the case may be, and all proceeds therefrom may be applied to pay the principal of, and interest, if any, on, such Subordinated Notes as and when the same will become due and payable notwithstanding the provisions of Article XI without regard to whether any or all of the Senior Indebtedness then outstanding will have been paid or otherwise provided for.

**ARTICLE IV**  
**REMEDIES**

Section 4.01      Events of Default; Acceleration.

An “Event of Default” means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or in accordance with any judgment, decree, or order of any court or any order, rule, or regulation of any administrative or governmental body):

(1) the entry of a decree or order for relief in respect of the Company by a court having jurisdiction in the premises in an involuntary case or proceeding under any applicable bankruptcy, insolvency, or reorganization law, now or hereafter in effect of the United States or any political subdivision thereof, and such decree or order will have continued unstayed and in effect for a period of 30 consecutive days;

(2) the commencement by the Company of a voluntary case under any applicable bankruptcy, insolvency or reorganization law, now or hereafter in effect of the United States or any political subdivision thereof, or the consent by the Company to the entry of a decree or order for relief in an involuntary case or proceeding under any such law;

(3) the failure of the Company to pay any installment of interest on any of the Subordinated Notes as and when the same will become due and payable, and the continuation of such failure for a period of 15 days;

(4) the failure of the Company to pay all or any part of the principal of any of the Subordinated Notes as and when the same will become due and payable under this Indenture;

(5) the failure of the Company to perform any other covenant or agreement on the part of the Company contained in the Subordinated Notes or in this Indenture, and the continuation of such failure for a period of 30 days after the date on which notice specifying such failure, stating that such notice is a “Notice of Default” hereunder and demanding that the Company remedy the same, will have been given, in the manner set forth in Section 1.05, to the Company by the Trustee, or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Subordinated Notes at the time Outstanding; or

(6) the default by the Company under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company having an aggregate principal amount outstanding of at least \$75,000,000, whether such indebtedness now exists or is created or incurred in the future, which default (i) constitutes a failure to pay any portion of the principal of such indebtedness when due and payable after the expiration of any applicable grace period or (ii) results in such indebtedness becoming due or being declared due and payable prior to the date on which it otherwise would have become due and payable without, in the case of clause (i), such indebtedness having been discharged or, in the case of clause (ii), without such indebtedness having been discharged or such acceleration having been rescinded or annulled.

Upon becoming aware of any Event of Default, the Company will promptly deliver to the Trustee a written statement specifying the Event of Default.

If an Event of Default described in Section 4.01(1) or Section 4.01(2) occurs, then the principal amount of all of the Outstanding Subordinated Notes, and accrued and unpaid interest, if any, on all Outstanding Subordinated Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder, and the Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. Notwithstanding the foregoing, because the Company will treat the Subordinated Notes as Tier 2 Capital, upon the occurrence of an Event of Default other than an Event of Default described in Section 4.01(1) or Section 4.01(2), neither the Trustee nor any Holder may accelerate the Maturity of the Subordinated Notes and make the principal of, and any accrued and unpaid interest on, the Subordinated Notes, immediately due and payable.

If any Event of Default occurs and is continuing, the Trustee may also pursue any other available remedy to collect the payment of principal of, and interest on, the Subordinated Notes or to enforce the performance of any provision of the Subordinated Notes or this Indenture.

Section 4.02            Failure to Make Payments.

If an Event of Default described in Section 4.01(3) or Section 4.01(4) occurs, the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Subordinated Notes, the whole amount then due and payable with respect to such Subordinated Notes, with interest upon the overdue principal, and, to the extent permitted by applicable law, upon any overdue installments of interest at the rate or respective rates, as the case may be, provided for or with respect to such Subordinated Notes or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Subordinated Notes, and, in addition thereto, such further amount of money as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due to the Trustee under Section 5.07.

If the Company fails to pay the money it is required to pay the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Subordinated Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

The Trustee may proceed to protect and enforce its rights and the rights of the Holders of Subordinated Notes by such appropriate judicial proceedings as the Trustee will deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy.

Upon the occurrence of a failure by the Company to make any required payment of principal or interest on the Subordinated Notes, the Company may not declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock, make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to the Subordinated Notes, or make any payments under any guarantee that ranks equal with or junior to the Subordinated Notes, other than: (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of Company's capital stock or the exchange or conversion of one class or series of Company's capital stock for another class or series of Company's capital stock; (iv) the purchase of fractional interests in shares of Company's capital stock in accordance with the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of Company's common stock related to the issuance of common stock or rights under any benefit plans for Company's directors, officers or employees or any of Company's dividend reinvestment plans.

Section 4.03            Trustee May File Proofs of Claim.

In case of any judicial proceeding relative to the Company (or any other obligor upon the Subordinated Notes), its property or its creditors, the Trustee will be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee will be authorized to:

(1) file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Subordinated Notes, of the principal and interest owing and unpaid in respect of such Subordinated Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or retained professionals) and of the Holders of such Subordinated Notes allowed in such judicial proceeding, and

(2) 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 authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee will consent to the making of such payments directly to the Holders and to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and retained professionals, and any other amounts due hereunder.

No provision of this Indenture will be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment, or composition affecting the Subordinated Notes or the rights of any Holder or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; *provided, however*, the Trustee may vote on behalf of the Holders for the election of a trustee in bankruptcy or similar official and may be a member of a creditors, or other similar committee.

Section 4.04            Trustee May Enforce Claims Without Possession of Subordinated Notes.

All rights of action and claims under this Indenture or the Subordinated Notes may be prosecuted and enforced by the Trustee without the possession of any of the Subordinated Notes or the production of such Subordinated Notes in any related proceeding, and any such proceeding instituted by the Trustee will be brought in its own name as trustee of an express trust, and any recovery of judgment will, after provision for the payment of the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents, and retained professionals, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 4.05            Application of Money Collected.

Any money collected by the Trustee in accordance with this Article IV or, after an Event of Default, any money or other property distributable in respect of the Company's obligations under this Indenture will be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any interest, upon presentation of the Subordinated Notes and the notation on such Subordinated Notes of the payment if only partially paid and upon surrender of such Subordinated Notes if fully paid:

FIRST: To the payment of all amounts due the Trustee (including the payment of Trustee's agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee), acting in any capacity hereunder, (including any predecessor trustee) under Section 5.07;

SECOND: To the payment of amounts then due and unpaid to the holders of Senior Indebtedness, to the extent required under the Subordination Provisions established with respect to the Subordinated Notes;

THIRD: To the payment of the amounts then due and unpaid for principal of and any interest on the Subordinated Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Subordinated Notes for principal and interest, respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.



Section 4.06      Limitation on Suits.

No Holder of any Subordinated Note will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or any Subordinated Notes, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture, unless:

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Subordinated Notes;
- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Subordinated Notes will have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture;
- (3) such Holder or Holders have offered to the Trustee security and indemnity reasonably satisfactory to the Trustee to bond against the costs, expenses, and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request, and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Subordinated Notes;

it being understood and intended that no one or more of such Holders will have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb, or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all of such Holders.

Section 4.07      Unconditional Right of Holders to Payments.

Notwithstanding any other provision in this Indenture, the Holder of any Subordinated Note will have the right, which is absolute and unconditional, to receive payment of the principal of and (subject to Section 2.07 and Section 2.10) any interest on such Subordinated Note on the respective Stated Maturity or Maturities expressed in such Subordinated Note (or, in the case of redemption, on the Redemption Date), and to institute suit for the enforcement of any such payment and such rights will not be impaired without the consent of such Holder.

Section 4.08      Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders will be restored severally and respectively to their former positions under this Indenture, and thereafter all rights and remedies of the Trustee and the Holders will continue as though no such proceeding had been instituted.

Section 4.09      Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Subordinated Notes in the last paragraph of Section 2.09, no right or remedy conferred in this Indenture upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by law, be cumulative and in addition to every other right and remedy given under this Indenture or now or in the future existing at law or in equity or otherwise. The assertion or employment of any right or remedy under this Indenture, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 4.10      Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Subordinated Notes to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of or acquiescence in any such Event of Default. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 4.11      Control by Holders.

The Holders of a majority in aggregate principal amount of the Outstanding Subordinated Notes will have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Subordinated Notes, *provided* that

- (1) such direction will not violate any rule of law or this Indenture or the Subordinated Notes,
- (2) the Trustee may take any other action deemed proper by the Trustee in its discretion which is not inconsistent with such direction, and
- (3) the Trustee will have the right to decline to follow any such direction if the Trustee in good faith will determine that the proceeding so directed would involve the Trustee in personal liability.

Section 4.12      Waiver of Past Defaults.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Subordinated Notes may on behalf of the Holders of all the Subordinated Notes waive any past default under this Indenture and its consequences, except a default in the payment of the principal of, or interest on, any Subordinated Note, or in respect of a covenant or provision of this Indenture which under Article VIII cannot be modified or amended without the consent of the Holder of each Outstanding Subordinated Note.

Upon any such waiver, such default will cease to exist, and any Event of Default arising from such default will be deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any consequent right.

Section 4.13 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Subordinated Notes by his acceptance of such Subordinated Notes will be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered, or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 4.13 will not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Subordinated Notes, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest, if any, on any Subordinated Notes on or after the Stated Maturity or Maturities expressed in such Subordinated Notes (or, in the case of redemption, on or after the Redemption Date).

**ARTICLE V**  
**THE TRUSTEE**

Section 5.01 Duties of Trustee.

(1) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it hereby, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(2) Except during the continuance of an Event of Default:

(a) the duties of the Trustee will be determined solely by the express provisions hereof and the Trustee need perform only those duties that are specifically set forth herein and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(b) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements hereof; however, the Trustee will examine the certificates and opinions to determine whether or not they conform on their face to the requirements hereof (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(3) Whether or not therein expressly so provided, every provision hereof that in any way relates to the Trustee is subject to paragraphs (1) and (2) of this Section 5.01 and to Section 5.02.

(4) No provision hereof will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee security and indemnity reasonably satisfactory to it against any loss, liability or expense.

(5) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 5.02 Certain Rights of Trustee.

Subject to Section 315(a) through Section 315(d) of the Trust Indenture Act:

(1) the Trustee may conclusively rely and will be 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 or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein will be sufficiently evidenced by a Company Request or a Company Order (unless other evidence in respect thereof be herein specifically prescribed) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee will deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence will be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate or Opinion of Counsel, or both, which will comply with Section 1.02;

(4) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care;

(5) the Trustee will be under no obligation to exercise any of the rights or powers vested in it by or under this Indenture at the request or direction of any Holder(s) under this Indenture, unless such Holder(s) will have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(6) the Trustee will 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 Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee will determine to make such further inquiry or investigation, it will be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent, accountant or attorney, at the sole cost of the Company and will incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee will not be responsible for any misconduct or negligence on the part of any agent or professional appointed with due care by it hereunder;

(8) the Trustee will 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 Indenture;

(9) in no event will the 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 Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(10) the Trustee will not be required to take notice or be deemed to have notice of any default or Event of Default, except failure by the Company to pay or cause to be made any of the payments required to be made to the Trustee to pay principal of, and interest on, the Subordinated Notes, unless a Responsible Officer of the Trustee shall receive written notice of such default or Event of Default from the Company or from the Holders of at least 25% in aggregate principal amount of the then Outstanding Subordinated Notes delivered to the Corporate Trust Office of the Trustee and in the absence of such notice so delivered the Trustee may conclusively assume no default or Event of Default exists;

(11) the Trustee shall have no duty to monitor or confirm compliance by the Company with the terms of this Indenture or any Subordinated Note;

(12) the Trustee shall not be bound to make any investigation into (i) the performance of or compliance with any of the covenants or agreements set forth herein, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture or any other agreement, instrument or document;

(13) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified for all costs (including those of its retained professionals), are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed or appointed to act hereunder;

(14) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions under this Indenture;

(15) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(16) the Trustee shall not be liable or responsible for any calculation in connection with the transactions contemplated hereunder nor for any information used in connection with such calculation; and

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

Section 5.03 Notice of Defaults.

Within 90 days after a Responsible Officer of the Trustee is notified of the occurrence of any default hereunder with respect to the Subordinated Notes in accordance with Section 5.02(10), the Trustee will deliver to all Holders entitled to receive reports in accordance with Section 6.03(4), notice of such default hereunder known to the Trustee, unless such default will have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal of or interest, if any, on, any Subordinated Note, the Trustee will be protected in withholding such notice if and so long as the Board of Directors or a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the best interest of the Holders. For the purpose of this Section, the term “default” means any event that is, or after notice or lapse of time or both would become, an Event of Default with respect to Subordinated Notes.

Section 5.04 Not Responsible for Recitals or Issuance of Subordinated Notes.

The recitals contained herein and in the Subordinated Notes, except the Trustee’s certificate of authentication, will 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 Subordinated Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Subordinated Notes and perform its obligations hereunder. Neither the Trustee nor any Authenticating Agent will be accountable for the use or application by the Company of the Subordinated Notes or the proceeds thereof. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Subordinated Notes, it will not be accountable for the Company’s use of the proceeds from the Subordinated Notes or any money paid to the Company or upon the Company’s direction under any provision hereof, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Subordinated Notes or any other document in connection with the sale of the Subordinated Notes or under this Indenture other than its certificate of authentication.

Section 5.05 May Hold Subordinated Notes.

The Trustee, any Authenticating Agent, any Paying Agent, any Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Subordinated Notes and, subject to Section 310(b) and Section 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights that it would have if it were not Trustee, Authenticating Agent, Paying Agent, Registrar or such other Person.

The Trustee is subject to Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of Trust Indenture Act to the extent indicated.

Section 5.06 Money Held in Trust.

Except as provided in Section 3.02(5), Section 3.03 and Section 9.03, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and will be held uninvested. The Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 5.07 Compensation and Reimbursement.

The Company agrees:

(1) to pay to the Trustee from time to time compensation for all services rendered by the Trustee acting in any capacity hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee promptly upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of Trustee's agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee), except any such expense, disbursement or advance resulting from the Trustee's gross negligence or willful misconduct; and

(3) to indemnify, defend, protect and hold each of the Trustee acting in any capacity or any predecessor Trustee and their agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee harmless from and against any and all losses, liabilities, damages, costs or expenses suffered or incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense resulting from its gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction, and the fees and disbursements of the Trustee's agents, legal counsel, accountants and experts and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee). The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. None of the Company need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

The obligations of the Company under this Section 5.07 will survive the satisfaction and discharge of this Indenture.

As security for the performance of the obligations of the Company under this Section, the Trustee will have a lien prior to the Subordinated Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, or interest on, Subordinated Notes. Such lien will survive the satisfaction and discharge hereof and the resignation or removal of the Trustee.

Any compensation or expense incurred by the Trustee after a default specified by Section 4.01 is intended to constitute an expense of administration under any then applicable bankruptcy or insolvency law. "Trustee" for purposes of this Section 5.07 will include any predecessor Trustee, but the negligence or bad faith of any Trustee will not affect the rights of any other Trustee under this Section 5.07. The provisions of this Section 5.07 will, to the extent permitted by law, survive any termination of this Indenture (including, without limitation, termination in accordance with any Bankruptcy Laws) and the resignation or removal of the Trustee.

Section 5.08            Corporate Trustee Required; Eligibility.

(1)            There will at all times be a Trustee hereunder that is a corporation, organized and doing business under the laws of the United States, any state thereof or the District of Columbia, eligible under Section 310(a)(1) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 and is subject to supervision or examination by federal or state authority. The Trustee will also satisfy the requirements of Section 310(a)(5) of the Trust Indenture Act. If at any time the Trustee will cease to be eligible in accordance with the provisions of this Section, it will resign immediately upon written request therefor by the Company or any Holder in the manner and with the effect hereinafter specified in this Article,

(2)            The Trustee will comply with Section 310(b) of the Trust Indenture Act; *provided, however*, that there will be excluded from the operation of Section 310(b)(1) of the Trust Indenture Act this Indenture or any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the Trust Indenture Act are met.

Section 5.09            Resignation and Removal; Appointment of Successor.

(1)            No resignation or removal of the Trustee and no appointment of a successor Trustee in accordance with this Article V will become effective until the acceptance of appointment by the successor Trustee in accordance with Section 5.10.

(2)            The Trustee may resign at any time with respect to the Subordinated Notes by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 5.10 will not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee.



(3) The Trustee may be removed at any time with respect to the Subordinated Notes by Act of the Holders of a majority in principal amount of the Outstanding Subordinated Notes, delivered to the Trustee and the Company.

If at any time:

(a) the Trustee will fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Subordinated Notes after written request therefor by the Company or any Holder who has been a bona fide Holder for at least six months,

(b) the Trustee will cease to be eligible under Section 5.08 and will fail to resign after written request therefor by the Company or any such Holder, or

(c) the Trustee will become incapable of acting or will be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property will be appointed or any public officer will take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company, by or in accordance with a Board Resolution, may remove the Trustee with respect to the Subordinated Notes, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Subordinated Notes and the appointment of a successor Trustee or Trustees.

(4) If the Trustee will resign, be removed or become incapable of acting, or if a vacancy will occur in the office of Trustee for any cause, with respect to the Subordinated Notes, the Company, by or in accordance with a Board Resolution, will promptly appoint a successor Trustee or Trustees with respect to the Subordinated Notes and will comply with the applicable requirements of Section 5.10. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Subordinated Notes shall have been appointed by Act of the Holders of a majority in principal amount of the Outstanding Subordinated Notes delivered to the Company and the retiring Trustee, the successor Trustee so appointed will, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 5.10, become the successor Trustee with respect to the Subordinated Notes and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Subordinated Notes will have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 5.10, any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Subordinated Notes.

(5) The Company will give notice of each resignation and each removal of the Trustee with respect to the Subordinated Notes and each appointment of a successor Trustee with respect to the Subordinated Notes by delivering written notice of such event by first-class mail, postage prepaid, to the Holders as their names and addresses appear in the Subordinated Note Register. Each notice will include the name of the successor Trustee with respect to the Subordinated Notes and the address of its Corporate Trust Office.

(1) Upon the appointment hereunder of any successor Trustee with respect to all Subordinated Notes, such successor Trustee so appointed will execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee will become effective and such successor Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges, will execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 9.03, will duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 5.07.

(2) Upon the appointment hereunder of any successor Trustee with respect to the Subordinated Notes, the Company, the retiring Trustee and such successor Trustee will execute and deliver an indenture supplemental hereto wherein each successor Trustee will accept such appointment and which (i) will contain such provisions as will be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Notes, (ii) if the retiring Trustee is not retiring with respect to all Subordinated Notes, will contain such provisions as will be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Notes will continue to be vested in the retiring Trustee, and (iii) will add to or change any of the provisions of this Indenture as will be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture will constitute such Trustees co-trustees of the same trust, that each such Trustee will be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee will be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee will become effective to the extent provided therein, such retiring Trustee will have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Subordinated Notes other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Notes; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Subordinated Notes and subject to Section 9.03 will duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Subordinated Notes, subject to its claim, if any, provided for in Section 5.07.

(3) Upon request of any Person appointed hereunder as a successor Trustee, the Company will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (1) or (2) of this Section, as the case may be.

(4) No Person will accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person will be qualified and eligible under this Article. No resigning or removed Trustee shall have any liability or responsibility for the action or inaction of any successor Trustee.

Section 5.11 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee will be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, will be the successor of the Trustee hereunder (provided that such corporation will otherwise be qualified and eligible under this Article), without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Subordinated Notes will have been authenticated but not delivered by the Trustee then in office, any such successor to such authenticating Trustee may adopt such authentication and deliver the Subordinated Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Subordinated Notes. In case any Subordinated Notes will not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Subordinated Notes in either its own name or that of its predecessor Trustee.

Section 5.12 Appointment of Authenticating Agent.

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to the Subordinated Notes which will be authorized to act on behalf of the Trustee to authenticate Subordinated Notes issued upon original issue, exchange, registration of transfer, partial redemption, partial repayment, or in accordance with Section 2.09, and Subordinated Notes so authenticated will be entitled to the benefits of this Indenture and will be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Subordinated Notes by the Trustee or the Trustee's certificate of authentication, such reference will be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent will be reasonably acceptable to the Company and, except as provided in or under this Indenture, will at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 and is subject to supervision or examination by federal or state authority. If at any time an Authenticating Agent will cease to be eligible in accordance with the provisions of this Section, it will resign immediately upon written request therefor by the Company or any Holder in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent will be a party, or any corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, will be the successor of such Authenticating Agent hereunder, provided such corporation will be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent will cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent that will be acceptable to the Company and will deliver written notice of such appointment by first-class mail, postage prepaid, to all Holders with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Subordinated Note Register. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, will become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent will be appointed unless eligible under the provisions of this Section 5.12.

The Company agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section. If the Trustee makes such payments, it will be entitled to be reimbursed for such payments, subject to the provisions of Section 5.07.

The provisions of Section 2.11, Section 5.04 and Section 5.05 will be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed under this Section, the Subordinated Notes may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

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

UMB Bank National Association, as Trustee

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

Name:

Title:

Dated:

Section 5.13      Preferred Collection of Claims against Company.

If and when the Trustee will be or become a creditor of the Company (or any other obligor upon the Subordinated Notes), the Trustee will be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

**ARTICLE VI**  
**HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY**

Section 6.01            Holder Lists.

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Holders. If the Trustee is not the Registrar, the Company will cause to be furnished to the Trustee at least semiannually on January 1 and July 1 a listing of the Holders dated within 10 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

Section 6.02            Preservation of Information; Communications to Holders.

The Trustee will comply with the obligations imposed upon it in accordance with Section 312 of the Trust Indenture Act.

Every Holder of Subordinated Notes, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee, any Paying Agent or any Registrar will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Subordinated Notes in accordance with Section 312(c) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee will not be held accountable by reason of delivering any material in accordance with a request made under Section 312(b) of the Trust Indenture Act.

Section 6.03            Reports by Trustee.

(1)            Within 60 days after July 15 of each year commencing with the first July 15 following the date of this Indenture, if required by Section 313(a) of the Trust Indenture Act, the Trustee will transmit, in accordance with Section 313(c) of the Trust Indenture Act, a brief report dated as of such July 15 with respect to any of the events specified in said Section 313(a) and Section 313(b)(2) that may have occurred since the later of the immediately preceding July 15 and the date of this Indenture.

(2)            The Trustee will transmit the reports required by Section 313(a) of the Trust Indenture Act at the times specified therein.

(3)            The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.

(4)            Reports under this Section will be transmitted in the manner and to the Persons required by Section 313(c) and Section 313(d) of the Trust Indenture Act.

(1) The Company, in accordance with Section 314(a) of the Trust Indenture Act, will:

(a) file with the Trustee, within 15 days after the Company files the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company may be required to file with the Commission in accordance with Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports in accordance with either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports that may be required in accordance with Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional certificates, information, documents and reports with respect to compliance by the Company, with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(c) transmit to the Holders within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company in accordance with paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(2) The Company intends to file the reports referred to in Section 6.04(1) with the Commission in electronic form in accordance with Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, will constitute delivery by the Company of such reports to the Trustee and Holders in compliance with the provision of Section 6.04(1) and Trust Indenture Act Section 314(a). Notwithstanding anything to the contrary herein, the Trustee will have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee in accordance with this Section 6.04(2) will be solely for the purposes of compliance with Section 6.04(1) and with Trust Indenture Act Section 314(a). The Trustee's receipt of such reports, information and documents (whether or not filed in electronic form) is for informational purposes only and the Trustee's receipt of such will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Trustee shall have no liability or responsibility for the filing, content or timelines of any report hereunder aside from any report transmitted under Section 6.03 hereof.

**ARTICLE VII**  
**SUCCESSORS**

Section 7.01            Merger, Consolidation or Sale of All or Substantially All Assets.

The Company will not, in any transaction or series of related transactions, consolidate with or merge into any Person or sell, assign, transfer, lease or otherwise convey all or substantially all its properties and assets to any Person, unless:

(1)            either the Company will be the continuing Person (in the case of a merger), or the successor Person (if other than the Company) formed by such consolidation or into which the Company is merged or which acquires by sale, assignment, transfer, lease or other conveyance all or substantially all the properties and assets of the Company will be a corporation organized and existing under the laws of the United States, any state thereof or the District of Columbia and will expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor corporation and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, and interest on, all the Outstanding Subordinated Notes and the due and punctual performance and observance of every obligation in this Indenture and the Outstanding Subordinated Notes on the part of the Company to be performed or observed;

(2)            immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Company or any Subsidiary as a result of that transaction as having been incurred by the Company or any Subsidiary at the time of the transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, will have occurred and be continuing; and

(3)            either the Company or the successor Person will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease or other conveyance and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article VII and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, assignment, transfer, lease or other conveyance of all or any of the properties and assets of one or more Subsidiaries of the Company (other than to the Company or another Subsidiary), which, if such properties and assets were directly owned by the Company, would constitute all or substantially all of the Company's properties and assets, will be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

Section 7.02            Successor Person Substituted for Company.

Upon any consolidation by the Company with or merger of the Company into any other Person or any sale, assignment, transfer, lease or conveyance of all or substantially all of the properties and assets of the Company to any Person in accordance with Section 7.01, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, assignment, transfer, lease or other conveyance is made will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease, the predecessor Person will be released from all obligations and covenants under this Indenture and the Subordinated Notes.

**ARTICLE VIII**  
**SUPPLEMENTAL INDENTURES**

Section 8.01      Supplemental Indentures without Consent of Holders.

Without the consent of any Holders of Subordinated Notes, the Company (when authorized by or in accordance with a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company contained herein and in the Subordinated Notes;
- (2) to add to the covenants of the Company for the benefit of the Holders (as will be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company with respect to the Subordinated Notes issued under this Indenture (as will be specified in such supplemental indenture or indentures);
- (3) to permit or facilitate the issuance of Subordinated Notes in uncertificated or global form, provided any such action will not adversely affect the interests of the Holders;
- (4) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Subordinated Notes and to add to or change any of the provisions of this Indenture as will be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, in accordance with the requirements of Section 5.10;
- (5) to cure any ambiguity or to correct or supplement any provision herein that may be defective or that may be inconsistent with any other provision herein;
- (6) to make any other provisions with respect to matters or questions arising under this Indenture that will not adversely affect the interests of the Holders of then Outstanding Subordinated Notes;
- (7) to add any additional Events of Default (as will be specified in such supplemental indenture);
- (8) to supplement any of the provisions of this Indenture to such extent as will be necessary to permit or facilitate the Legal Defeasance, Covenant Defeasance and/or satisfaction and discharge of the Subordinated Notes in accordance with Article III, provided that any such action will not adversely affect the interests of any Holder;



- (9) to provide for the issuance of Exchange Notes;
- (10) to conform any provision in this Indenture to the requirements of the Trust Indenture Act; or
- (11) to make any change that does not adversely affect the legal rights under this Indenture of any Holder.

Section 8.02 Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Subordinated Notes, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or in accordance with a Board Resolution), and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of the Subordinated Notes or of modifying in any manner the rights of the Holders under this Indenture; provided, that no such supplemental indenture, without the consent of the Holder of each Outstanding Subordinated Note affected thereby, will:

- (1) reduce the rate of or change the time for payment of interest, including Defaulted Interest, on any Subordinated Notes;
- (2) reduce the principal of or change the Stated Maturity of any Subordinated Notes, or change the date on which any Subordinated Notes may be subject to redemption or reduce the Redemption Price therefore;
- (3) make any Subordinated Note payable in money other than Dollars;
- (4) make any change in provisions of this Indenture protecting the right of each Holder to receive payment of principal of and interest on such Subordinated Note on or after the due date thereof or to bring suit to enforce such payment;
- (5) reduce the percentage in principal amount of the Outstanding Subordinated Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in Section 4.12 or Section 9.07 of this Indenture; or
- (6) modify any of the provisions of this Section 8.02, Section 4.12 or Section 9.07, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Subordinated Note affected thereby.

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

Section 8.03      Execution of Supplemental Indentures.

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article VIII or the modifications thereby of the trust created by this Indenture, the Trustee will be entitled to receive, and (subject to Section 5.01) will be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel to the effect that the execution of such supplemental indenture is authorized or permitted by this Indenture, that such supplemental indenture has been duly authorized, executed and delivered by, and is a valid, binding and enforceable obligation of, the Company, subject to customary exceptions, and that, to the extent applicable pursuant to Section 8.01, such supplemental indenture does not adversely affect the interests of the Holders. The Trustee may, but will not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 8.04      Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article VIII, this Indenture will be modified in accordance therewith, and such supplemental indenture will form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder.

Section 8.05      Reference in Subordinated Notes to Supplemental Indentures.

Subordinated Notes authenticated and delivered after the execution of any supplemental indenture in accordance with this Article VIII may, and will if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company will so determine, new Subordinated Notes so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Subordinated Notes.

Section 8.06      Effect on Senior Indebtedness.

No supplemental indenture will directly or indirectly modify or eliminate the Subordination Provisions or the definition of "Senior Indebtedness" applicable with respect to the Subordinated Notes in any manner that might terminate or impair the subordination of such Subordinated Notes to such Senior Indebtedness without the prior written consent of each of the holders of such Senior Indebtedness.

Section 8.07      Conformity with Trust Indenture Act.

Every supplemental indenture executed in accordance with this Article will conform to the requirements of the Trust Indenture Act as then in effect.

**ARTICLE IX**  
**COVENANTS**

Section 9.01            Payment of Principal and Interest.

The Company covenants and agrees for the benefit of the Holders that it will duly and punctually pay the principal of, and interest on, the Subordinated Notes, in accordance with the terms thereof and this Indenture. Principal and interest will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 11:00 a.m., Eastern time, on the Business Day immediately prior to any Interest Payment Date, an amount in immediately available funds provided by the Company that is designated for and sufficient to pay all principal and interest then due. The Company will pay all Additional Interest, if any, on the dates and in the amounts set forth in the Registration Rights Agreement.

If Additional Interest is payable by the Company in accordance with the Registration Rights Agreement, the Company will deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives such a certificate or instruction or direction from the Holders in accordance with the terms of this Indenture, the Trustee may assume without inquiry that no Additional Interest is payable. The foregoing will not prejudice the rights of the Holders with respect to their entitlement to Additional Interest as otherwise set forth in this Indenture or the Subordinated Notes and pursuing any action against the Company directly or otherwise directing the Trustee to take such action in accordance with the terms of this Indenture and the Subordinated Notes. If the Company has paid Additional Interest directly to persons entitled to it, the Company will deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 9.02            Maintenance of Office.

The Company will maintain an office or agency in The City of New York (which may be an office of the Trustee or an Affiliate of the Trustee or Registrar) where Subordinated Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Subordinated Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Subordinated Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in The City of New York. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee in each of The City of New York and in Houston, Texas as one such office or agency of the Company in accordance with Section 9.02; provided, however, that no service of legal process on the Company may be made at any office of the Trustee.

Section 9.03            Money for Subordinated Notes Payments to Be Held in Trust.

If the Company will at any time act as its own Paying Agent, it will, on or before each due date of the principal of, or interest on, any of the Subordinated Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in Dollars sufficient to pay the principal and interest, as the case may be, so becoming due until such sums will be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company will have one or more Paying Agents, it will, on or prior to each due date of the principal of, or interest on, any Subordinated Notes, deposit with any Paying Agent a sum in Dollars sufficient to pay the principal and interest, as the case may be, so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent will agree with the Trustee, subject to the provisions of this Section that such Paying Agent will:

- (1) hold all sums held by it for the payment of the principal of, or interest on, the Subordinated Notes in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as provided in or under this Indenture;
- (2) give the Trustee notice of any default by the Company in the making of any payment of principal, or interest on, the Subordinated Notes;  
and
- (3) at any time during the continuance of any such default, upon the written request of the Trustee, pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent will be released from all further liability with respect to such sums.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, or interest on, any Subordinated Note and remaining unclaimed for two years after such principal or interest will have become due and payable will be paid to the Company upon a Company Request, or (if then held by the Company) will be discharged from such trust; and the Holder of such Subordinated Note will thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease.

Section 9.04            Corporate Existence.

Subject to Article VII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect (i) the corporate existence of the Company, (ii) the existence (corporate or otherwise) of each Significant Subsidiary and (iii) the rights (charter and statutory), licenses and franchises of the Company and each of its Significant Subsidiaries, including without limitation the Company's status as a bank holding company or financial holding company under the Bank Holding Company Act of 1956, as amended, and the Company's principal bank subsidiary's status as an "insured depository institution" under Section 3(c)(2) of the Federal Deposit Insurance Act, as amended; provided, however, that the Company will not be required to preserve the existence (corporate or other) of any of its Significant Subsidiaries or any such right, license or franchise of the Company or any of its Significant Subsidiaries if the Board of Directors of the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Significant Subsidiaries taken as a whole and that the loss thereof will not be disadvantageous in any material respect to the Holders. Subject to Article VII, the Company shall not take any action, omit to take any action or enter into any transaction that would have the effect of the Company owning less than one hundred percent (100%) of the capital stock of the Company's principal bank subsidiary.

Section 9.05            Maintenance of Properties.

The Company will, and will cause each Significant Subsidiary to, cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, that nothing in this Section will prevent the Company or any Significant Subsidiary from discontinuing the operation and maintenance of any of their respective properties if such discontinuance is, in the judgment of the Board of Directors of the Company or of any Significant Subsidiary, as the case may be desirable in the conduct of its business.

Section 9.06            Dividends.

The Company shall not declare or pay any dividend, or make any distribution on capital stock or other equity securities of any kind of the Company, in each case except: (i) in such amounts as permitted by applicable regulations and only upon receipt of any required regulatory approval; and (ii) for dividends payable solely in shares of common stock of the Company.

Section 9.07            Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 9.02 to Section 9.06, inclusive, with respect to the Subordinated Notes if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Subordinated Notes, by Act of such Holders, either will waive such compliance in such instance or generally will have waived compliance with such term, provision or condition, but no such waiver will extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver will become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition will remain in full force and effect.

Section 9.08 Company Statement as to Compliance.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate covering the preceding calendar year, stating whether or not, to the best of his or her knowledge, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to notice requirements or periods of grace) and if the Company will be in default, specifying all such defaults and the nature and status thereof of which he or she may have knowledge.

Section 9.09 Tier 2 Capital.

If all or any portion of the Subordinated Notes ceases to be deemed to be Tier 2 Capital, other than due to the limitation imposed on the capital treatment of subordinated debt during the five (5) years immediately preceding the Maturity Date of the Subordinated Notes, the Company will immediately notify the Trustee and the Holders thereof, and thereafter the Company and the Holders will work together in good faith, subject to the terms of this Indenture, to execute and deliver all agreements as reasonably necessary in order to restructure the applicable portions of the obligations evidenced by the Subordinated Notes to qualify as Tier 2 Capital and the Company shall request, subject to the terms of this Indenture, that the Trustee execute and deliver all such agreements as may be reasonably necessary in order to effect any restructuring agreed to by the Company and the Holders; *provided, however*, that nothing contained in this Section 9.09 shall limit the Company's right to redeem the Subordinated Notes upon the occurrence of a Tier 2 Capital Event pursuant to Section 10.01(3) hereof.

**ARTICLE X**  
**REDEMPTION OF SECURITIES**

Section 10.01 Applicability of Article.

(1) Except as provided in this Section 10.01, the Subordinated Notes are not subject to redemption at the option of the Company. The Subordinated Notes are not subject to redemption at the option of the Holders.

(2) Subject to the receipt of the prior approval of the Board of Governors of the Federal Reserve System (the "Federal Reserve"), to the extent such approval is then required under the capital adequacy rules of the Federal Reserve, with corresponding written notice to the Trustee, the Company may, at its option, on any Interest Payment Date on or after September 30, 2024, redeem all or a portion of the Subordinated Notes.

(3) Subject to the receipt of the prior approval of the Federal Reserve, to the extent such approval is then required under the capital adequacy rules of the Federal Reserve, with corresponding written notice to the Trustee, the Company may, at its option, redeem all, but not a portion of the Outstanding Subordinated Notes at any time upon an Investment Company Event, a Tax Event or a Tier 2 Capital Event.

(4) The Redemption Price with respect to any redemption permitted under this Indenture will be equal to 100% of the principal amount of the Subordinated Notes to be redeemed, plus accrued but unpaid interest and Additional Interest, if any, thereon to, but excluding, the Redemption Date.

Section 10.02      Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Subordinated Notes will be evidenced by a Company Order. In case of any redemption of less than all of the Subordinated Notes, the Company will, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice will be satisfactory to the Trustee, but in any event not less than 45 days prior to the Redemption Date), notify the Trustee, of such Redemption Date and of the principal amount of Subordinated Notes to be redeemed.

In the case of any redemption of Subordinated Notes (i) prior to the expiration of any restriction on such redemption provided in the terms of such Subordinated Notes or elsewhere in this Indenture or (ii) in accordance with an election of the Company that is subject to a condition specified in the terms of such Subordinated Notes or elsewhere in this Indenture, the Company will furnish to the Trustee an Officers' Certificate evidencing compliance with such restriction or condition.

Section 10.03      Selection by Trustee of Subordinated Notes to be Redeemed.

If less than all of the Subordinated Notes are to be redeemed, the particular Subordinated Notes to be redeemed will be selected not more than 45 days prior to the Redemption Date by the Trustee from the Outstanding Subordinated Notes not previously called for redemption unless otherwise required by law or applicable depositary requirements, on a pro rata basis as to the Holders and which may provide for the selection for redemption of portions of the principal amount of Subordinated Notes; *provided, however*, that no such partial redemption will reduce the portion of the principal amount of a Subordinated Note not redeemed to less than the minimum denomination for a Subordinated Note established in or under this Indenture. In the event a pro rata redemption is not permitted under applicable law or applicable depositary requirements, the Subordinated Notes to be redeemed will be selected by lot or such method as the Trustee will deem fair and appropriate.

The Trustee will promptly notify the Company and the Registrar (if other than itself) in writing of the Subordinated Notes selected for redemption and, in the case of any Subordinated Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinated Notes will relate, in the case of any Subordinated Notes redeemed or to be redeemed only in part, to the portion of the principal of such Subordinated Notes which has been or is to be redeemed.

Section 10.04 Notice of Redemption.

Notice of redemption will be given in the manner provided in Section 1.05, not less than 30 nor more than 60 days prior to the Redemption Date to the Holders of Subordinated Notes to be redeemed. Failure to give notice by delivering in the manner herein provided to the Holder of any Subordinated Notes designated for redemption as a whole or in part, or any defect in the notice to any such Holder, will not affect the validity of the proceedings for the redemption of any other Subordinated Notes or portions thereof.

Any notice that is delivered to the Holder of any Subordinated Notes in the manner herein provided will be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption will state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all Outstanding Subordinated Notes are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Subordinated Note or Subordinated Notes to be redeemed,
- (4) that, in case any Subordinated Note is to be redeemed in part only, on and after the Redemption Date, upon surrender of such Subordinated Note, the Holder of such Subordinated Note will receive, without charge, a new Subordinated Note or Subordinated Notes of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that, on the Redemption Date, the Redemption Price will become due and payable upon each such Subordinated Note or portion thereof to be redeemed, together (if applicable) with accrued and unpaid interest and Additional Interest, if any, thereon (subject, if applicable, to the provisos to the first paragraph of Section 10.06), and, if applicable, that interest thereon will cease to accrue on and after said date,
- (6) the place or places where such Subordinated Notes are to be surrendered for payment of the Redemption Price and any accrued interest pertaining thereto, and
- (7) the section hereunder providing for such redemption.

The notice of redemption shall include the CUSIP number reference numbers of such Subordinated Notes, if any (or any other numbers used by a Depository to identify such Subordinated Notes).

Notice of redemption of Subordinated Notes to be redeemed at the election of the Company will be given by the Company or, at the Company's request delivered at least 10 days before the date such notice is to be given (unless a shorter period will be acceptable to the Trustee) together with the form of notice to be delivered, by the Trustee in the name and at the expense of the Company.



Section 10.05      Deposit of Redemption Price.

On or prior to 11:00 a.m., Eastern time, on any Redemption Date, the Company will deposit, with respect to the Subordinated Notes called for redemption in accordance with Section 10.04, with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 9.03) an amount sufficient to pay the Redemption Price of, and (except if the Redemption Date will be an Interest Payment Date) any accrued interest on, all such Subordinated Notes or portions thereof which are to be redeemed on that date.

Section 10.06      Subordinated Notes Payable on Redemption Date.

Notice of redemption having been given as provided above, the Subordinated Notes so to be redeemed will, on the Redemption Date, become due and payable at the Redemption Price therein specified, together with accrued and unpaid interest and Additional Interest, if any, thereon and from and after such date (unless the Company will default in the payment of the Redemption Price and accrued interest, if any) such Subordinated Notes will cease to bear interest. Upon surrender of any such Subordinated Note for redemption in accordance with said notice, such Subordinated Note will be paid by the Company at the Redemption Price, together with any accrued and unpaid interest and Additional Interest, if any, thereon to but excluding the Redemption Date; *provided, however*, that installments of interest on Subordinated Notes whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Subordinated Notes registered as such on the Regular Record Dates therefor according to their terms and the provisions of Section 2.10.

If any Subordinated Note called for redemption will not be so paid upon surrender thereof for redemption, the principal, until paid, will bear interest from the Redemption Date at the rate prescribed therefor in the Subordinated Note or, if no rate is prescribed therefor in the Subordinated Note, at the rate of interest, if any, borne by such Subordinated Note.

Section 10.07      Subordinated Notes Redeemed in Part.

Any Subordinated Note which is to be redeemed only in part will be surrendered at any office or agency for such Subordinated Note (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company will execute and the Trustee will authenticate and deliver to the Holder of such Subordinated Note without service charge, a new Subordinated Note or Subordinated Notes, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Subordinated Note so surrendered. If a Global Subordinated Note is so surrendered, the Company will execute, and the Trustee will authenticate and deliver to the Depository for such Global Subordinated Note as will be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Global Subordinated Note in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Subordinated Note so surrendered.

Upon surrender of a Subordinated Note that is redeemed in part, the Company will issue and the Trustee will authenticate for the Holder at the expense of the Company a new Subordinated Note equal in principal amount to the unredeemed portion of the Subordinated Notes Note surrendered representing the same indebtedness to the extent not redeemed. Notwithstanding anything in this Indenture to the contrary, only a Company Order and not an Opinion of Counsel or an Officers' Certificate of the Company is required for the Trustee to authenticate such new Subordinated Note.

**ARTICLE XI**  
**SUBORDINATION OF SECURITIES**

Section 11.01      Agreement to Subordinate.

The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of Subordinated Notes by the Holder's acceptance thereof, likewise covenants and agrees, that the payment of the principal of and interest on each and all of the Subordinated Notes is and will be expressly subordinated in right of payment to the prior payment in full of all Senior Indebtedness.

Section 11.02      Distribution of Assets.

(1)      Upon any distribution of assets of the Company upon any termination, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred upon the Senior Indebtedness and the holders thereof with respect to the Subordinated Notes and the Holders thereof by a lawful plan of reorganization under applicable bankruptcy law):

(a)      holders of all Senior Indebtedness will first be entitled to receive payment in full in accordance with the terms of such Senior Indebtedness of the principal thereof, premium, if any, and the interest due thereon (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) before the Holders of the Subordinated Notes are entitled to receive any payment upon the principal of or interest on indebtedness evidenced by the Subordinated Notes;

(b)      any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders would be entitled except for the provisions of this Article XI, including any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Subordinated Notes, will be paid by the liquidating trustee or agent or other Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, in accordance with the priorities then existing among holders of Senior Indebtedness for payment of the aggregate amounts remaining unpaid on account of the principal, premium, if any, and interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness; it being understood that if the Holders fail to file a proper claim in the form required by any proceeding referred to in this Section 11.02(1)(b) prior to 30 days before the expiration of the time to file such claim or claims, then the holders of Senior Indebtedness are hereby authorized to file an appropriate claim or claims for and on behalf of the Holders, in the form required in any such proceeding; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinate to the payment of the Subordinated Notes will be received by the Trustee or the Holders before all Senior Indebtedness is paid in full, such payment or distribution will be paid over to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment of assets of the Company for all Senior Indebtedness remaining unpaid until all such Senior Indebtedness will have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness,

(2) Subject to the payment in full of all Senior Indebtedness, the Holders will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal of and interest on the Subordinated Notes will be paid in full and no such payments or distributions to holders of such Senior Indebtedness to which the Holders would be entitled except for the provisions hereof of cash, property or securities otherwise distributable to the holders of Senior Indebtedness will, as between the Company, its creditors, other than the holders of Senior Indebtedness, and the Holders, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. It is understood that the provisions of this Article XI are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Notes, on the one hand, and the holders of Senior Indebtedness, on the other hand. Nothing contained in this Article XI or elsewhere in this Indenture or any supplemental indenture issued in accordance with Article VIII of this Indenture or in the Subordinated Notes is intended to or will impair, as between the Company, its creditors, other than the holders of Senior Indebtedness, and the Holders, the obligation of the Company, which is unconditional and absolute, to pay to the Holders the principal of and interest on the Subordinated Notes as and when the same will become due and payable in accordance with their terms or to affect the relative rights of the Holders and creditors of the Company, other than the holders of the Senior Indebtedness, nor, except as otherwise expressly provided in this Indenture and the Subordinated Notes with respect to the limitation on the rights of the Trustee and the Holders, to accelerate the maturity of the Subordinated Notes and pursue remedies upon such an acceleration, will anything herein or in the Subordinated Notes prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon any Event of Default under the Indenture occurring, subject to the rights, if any, under this Article XI of the holders of Senior Indebtedness, in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any payment or distribution of assets of the Company referred to in this Article XI, the Trustee and the Holders will be entitled to rely upon any order or decree of a court of competent jurisdiction in which such termination, winding up, liquidation or reorganization proceeding is pending or upon a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XI. In the absence of any such liquidating trustee, agent or other person, the Trustee will be entitled to rely upon a written notice by a Person representing itself to be a holder of Senior Indebtedness (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of Senior Indebtedness (or is such a trustee or representative). If the Trustee determines, in good faith, that further evidence is required with respect to the right of any Person, as a holder of Senior Indebtedness, to participate in any payment or distribution in accordance with this Article XI, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, as to the extent to which such Person is entitled to participation in such payment or distribution, and as to other facts pertinent to the rights of such Person under this Article XI, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Indebtedness will be read into this Indenture against the Trustee. The Trustee, however, will not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness by reason of the execution of this Indenture, or any other supplemental indenture entered into in accordance with Article VIII of this Indenture, and will not be liable to any such holders if it will in good faith mistakenly pay over or distribute to or on behalf of the Holders or the Company moneys or assets to which any holders of Senior Indebtedness will be entitled by virtue of this Article XI or otherwise.

Section 11.03      Default With Respect to Senior Indebtedness.

In the event and during the continuation of any default in the payment of principal of, or premium, if any, or interest on, any Senior Indebtedness, beyond any applicable grace period, or if any event of default with respect to any Senior Indebtedness will have occurred and be continuing, or would occur as a result of the payment referred to hereinafter, permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to accelerate the maturity thereof, then, unless and until such default or event of default will have been cured or waived or will have ceased to exist, no payment or principal of or interest on the Subordinated Notes, or in respect of any retirement, purchase or other acquisition of any of the Subordinated Notes, will be made by the Company.

Section 11.04      No Impairment.

Nothing contained in this Indenture, any other supplemental indenture entered into in accordance with Article VIII of this Indenture, or in any of the Subordinated Notes will: (i) impair, as between the Company and the Holders, the obligations of the Company, to make, or prevent the Company from making, at any time except as provided in Section 11.02 and Section 11.03, payments of principal of, or interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect) on, the Subordinated Notes, as and when the same will become due and payable in accordance with the terms of the Subordinated Notes; (ii) affect the relative rights of the Holders and creditors of the Company other than the holders of the Senior Indebtedness; (iii) except as otherwise expressly provided in this Indenture and the Subordinated Notes with respect to the limitation on the rights of the Trustee and the Holders, to accelerate the maturity of the Subordinated Notes and pursue remedies upon such an acceleration, prevent the Holder of any Subordinated Notes or the Trustee from exercising all remedies otherwise permitted by applicable law upon default thereunder, subject to the rights, if any, under this Article XI of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of such remedy; or (iv) prevent the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to the payment of or on account of the principal of, or interest on, the Subordinated Notes or prevent the receipt by the Trustee or any Paying Agent of such moneys, if, prior to the third Business Day prior to such deposit, the Trustee or such Paying Agent did not have written notice of any event prohibiting the making of such deposit by the Company.

Section 11.05      Effectuation of Subordination Provisions.

Each Holder by his acceptance of any Notes authorizes and expressly directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the Subordination Provisions, and appoints the Trustee such Holder's attorney-in-fact for such purposes, including, in the event of any termination, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors by the Company, a marshalling of the assets and liabilities of the Company or otherwise) tending toward the liquidation of the property and assets of the Company, the filing of a claim for the unpaid balance of the Subordinated Notes in the form required in those proceedings.

Section 11.06      Notice to Trustee.

The Company will give prompt written notice to the Trustee of any fact known to the Company that would prohibit the Company from making any payment to or by the Trustee in respect of the Subordinated Notes in accordance with the provisions of this Article XI. The Trustee will not be charged with the knowledge of the existence of any default or event of default with respect to any Senior Indebtedness or of any other facts that would prohibit the making of any payment to or by the Trustee or any Paying Agent unless and until a Responsible Officer of the Trustee has received a written notice specifying such default, event of default or other facts signed by an Authorized Officer, or by a holder of Senior Indebtedness or a trustee or agent thereof; and prior to the receipt of any such written notice, the Trustee will, subject to Article V of this Indenture, be entitled to assume that no such facts exist; provided that, if the Trustee will not have received the notice provided for in this Section 11.06 at least two Business Days prior to the date upon which, by the terms of the Indenture, any monies will become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Subordinated Note), then, notwithstanding anything herein to the contrary, the Trustee will have full power and authority to receive any monies from the Company and to apply the same to the purpose for which they were received, and will not be affected by any notice to the contrary that may be received by it on or after such prior date except for an acceleration of the Subordinated Notes prior to such application. The foregoing will not apply if the Paying Agent is the Company. The Trustee will be entitled to rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Senior Indebtedness (or a trustee on behalf of, or agent of, such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or agent on behalf of any such holder.

In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution in accordance with this Article XI, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XI and, if such evidence is not furnished to the Trustee, the Trustee may defer any payment to such Person pending such evidence being furnished to the Trustee or a judicial determination that such Person has the right to receive such payment.

Section 11.07      Trustee Knowledge of Senior Indebtedness.

Notwithstanding the provisions of this Article XI or any other provisions of this Indenture or any other supplemental indenture issued in accordance with Article VIII of this Indenture, neither the Trustee nor any Paying Agent will be charged with knowledge of the existence of any Senior Indebtedness or of any event that would prohibit the making of any payment of moneys to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee or such Paying Agent has received written notice thereof from the Company or from the holder of any Senior Indebtedness or from the representative of any such holder.

Section 11.08      Senior Indebtedness to Trustee.

The Trustee will be entitled to all of the rights set forth in this Article XI in respect of any Senior Indebtedness at any time held by it in its individual capacity to the same extent as any other holder of such Senior Indebtedness, and nothing in this Indenture or any other supplemental indenture issued in accordance with Article VIII of this Indenture will be construed to deprive the Trustee of any of its rights as such holder.

Section 11.09      Subordination Not Applicable to Trustee Compensation.

Nothing contained in this Article XI will apply to the claims of, or payments to, the Trustee under Section 5.07 of this Indenture.

The Trustee hereby accepts the trusts in this Indenture upon the terms and conditions set forth herein.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly signed as of the date first written above.

**MIDLAND STATES BANCORP, INC.**

By: /s/ Jeffrey G. Ludwig  
Name Jeffrey G. Ludwig  
Title President and Chief Executive Officer

*[Signature Page to Indenture]*

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**UMB BANK NATIONAL ASSOCIATION**  
As Trustee

By: /s/ Mauri J. Cowen  
Name Mauri J. Cowen  
Title Sr. Vice President

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*[Signature Page to Indenture]*

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**Exhibit A-1**  
**Form of Definitive Subordinated Notes**

**MIDLAND STATES BANCORP, INC.**

**5.00% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE SEPTEMBER 30, 2029**

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER; (B) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).]

THE SECURITY AND THE OBLIGATIONS OF THE COMPANY AS EVIDENCED BY THIS SUBORDINATED NOTE (1) ARE NOT A DEPOSIT AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND AND (2) ARE SUBORDINATE IN THE RIGHT OF PAYMENT TO ALL SENIOR INDEBTEDNESS (AS DEFINED IN THE INDENTURE IDENTIFIED HEREIN).

**CERTAIN ERISA CONSIDERATIONS:**

THE HOLDER OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, ARE NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE AND HOLDING. ANY PURCHASER OR HOLDER OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER: (i) IT IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN TO WHICH TITLE I OF ERISA OR SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLANS, OR ANY OTHER PERSON OR ENTITY USING THE "PLAN ASSETS" OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE OR (ii) SUCH PURCHASE OR HOLDING WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH FULL EXEMPTIVE RELIEF IS NOT AVAILABLE UNDER APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

ANY FIDUCIARY OF ANY PLAN WHO IS CONSIDERING THE ACQUISITION OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN SHOULD CONSULT WITH HIS OR HER LEGAL COUNSEL PRIOR TO ACQUIRING THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN.

**MIDLAND STATES BANCORP, INC.****5.00% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE 2029**

**THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND.**

1. **Indenture; Holder.** This Subordinated Note is one of a duly authorized issue of notes of Midland States Bancorp, Inc., an Illinois corporation (the “Company”), designated as the “5.00% Fixed-to-Floating Rate Subordinated Notes due 2029” (the “Subordinated Notes”) in an aggregate principal amount of \$72,750,000 and initially issued on September 20, 2019. The Company has issued this Subordinated Note under that certain Indenture dated as of September 20, 2019, relating to the Subordinated Notes, as the same may be amended or supplemented from time to time (“Indenture”), between the Company and UMB Bank National Association, a national banking association, as Trustee (the “Trustee”). All capitalized terms not otherwise defined in this Subordinated Note will have the meanings assigned to them in the Indenture. The terms of this Subordinated Note include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). This Subordinated Note is subject to all such terms, and the Holder (as defined below) is referred to the Indenture and the Trust Indenture Act for a statement of such terms. To the extent any provision of this Subordinated Note irreconcilably conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

2. **Payment.** The Company, for value received, promises to pay to [●], the principal sum of [●] DOLLARS (U.S.) (\$[●]), plus accrued but unpaid interest on September 30, 2029 (“Stated Maturity”) and to pay interest thereon (i) from and including the original issue date of the Subordinated Notes, or from the most recent date to which interest has been paid or duly provided for, to but excluding September 30, 2024, at the rate of 5.00% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable semi-annually in arrears on March 30 and September 30 of each year (each, a “Fixed Interest Payment Date”), beginning March 30, 2020, and (ii) from and including September 30, 2024 to, but excluding the Stated Maturity or the early redemption date contemplated by Section 5 of this Subordinated Note (the “Floating Rate Period”), at the rate per annum, reset quarterly, equal to the Floating Interest Rate (as defined below) determined on the Floating Interest Determination Date (as defined below) of the applicable interest period plus 361 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on March 30, June 30, September 30 and December 30 (each quarterly period, a “Floating Interest Period”) of each year (each payment date, a “Floating Interest Payment Date”). Dollar amounts resulting from this calculation shall be rounded to the nearest cent, with one-half cent being rounded up. The term “Floating Interest Determination Date” means the date upon which the Floating Interest Rate is determined by the Calculation Agent pursuant to the Three-Month Term SOFR Conventions. The Company will pay all Additional Interest (as defined in the Indenture), if any, on the dates and in the amounts set forth in the Registration Rights Agreement (as defined in the Indenture).

- (a) An “Interest Payment Date” is either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable.
- (b) The “Floating Interest Rate” means:
  - (i) initially Three-Month Term SOFR (as defined below).
  - (ii) Notwithstanding the foregoing clause (i) of this Section 2(b):
    - (1) If the Calculation Agent determines prior to the relevant Floating Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date (each of such terms as defined below) have occurred with respect to Three-Month Term SOFR, then the Company shall promptly provide notice of such determination to the Holder and Section 2(c) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the Floating Interest Rate payable on the Subordinated Notes during a relevant Floating Interest Period.
    - (2) However, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, but for any reason the Benchmark Replacement has not been determined as of the relevant Floating Interest Determination Date, the Floating Interest Rate for the applicable Floating Interest Period will be equal to the Floating Interest Rate on the last Floating Interest Determination Date for the Subordinated Notes, as determined by the Calculation Agent.
  - (iii) If the then-current Benchmark is Three-Month Term SOFR and any of the foregoing provisions concerning the calculation of the interest rate and the payment of interest during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions (as defined below) determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply.
- (c) Effect of Benchmark Transition Event.
  - (i) If the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time (as defined below) in respect of any determination of the Benchmark (as defined below) on any date, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Subordinated Notes during the relevant Floating Interest Period in respect of such determination on such date and all determinations on all subsequent dates.

- (ii) In connection with the implementation of a Benchmark Replacement, the Company will have the right to make Benchmark Replacement Conforming Changes from time to time.
- (iii) Any determination, decision or election that may be made by the Calculation Agent pursuant to the benchmark transition provisions set forth herein, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action or any selection:
  - (1) will be conclusive and binding absent manifest error;
  - (2) if made by the Company, will be made in the Company's sole discretion; and
  - (3) notwithstanding anything to the contrary in this Subordinated Note or the Indenture, shall become effective without consent from the Holder or any other party.
- (iv) For the avoidance of doubt, after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, interest payable on this Subordinated Note for the Floating Rate Period will be an annual rate equal to the sum of the applicable Benchmark Replacement and the spread specified on the face hereof.
- (v) As used in this Subordinated Note:
  - 1. "Benchmark" means, initially, Three-Month Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement.
  - 2. "Benchmark Replacement" means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then "Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- a. Compounded SOFR;
  - b. the sum of: (i) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (ii) the Benchmark Replacement Adjustment;
  - c. the sum of: (i) the ISDA Fallback Rate and (ii) the Benchmark Replacement Adjustment;
  - d. the sum of: (i) the alternate rate of interest that has been selected by the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated floating rate notes at such time and (ii) the Benchmark Replacement Adjustment.
3. “Benchmark Replacement Adjustment” means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:
- a. the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
  - b. if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
  - c. the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.
4. “Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Floating Interest Period,” timing and frequency of determining rates with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors and other administrative matters) that the Company decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).

5. “Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:
- a. in the case of clause (a) of the definition of “Benchmark Transition Event,” the relevant Reference Time in respect of any determination;
  - b. in the case of clause (b) or (c) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
  - c. in the case of clause (d) of the definition of “Benchmark Transition Event,” the date of such public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for purposes of such determination.

6. “Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:
- a. if the Benchmark is Three-Month Term SOFR, (i) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (ii) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (iii) the Calculation Agent determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;
  - b. a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;

- c. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
  - d. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.
7. "Calculation Agent" means such bank or other entity (which may be the Company or one of its Affiliates) as may be appointed by the Company, in writing, to act as Calculation Agent for the Subordinated Notes during the Floating Rate Period, and who has accepted such appointment in writing.
8. "Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Floating Interest Period) being established by the Company in accordance with:
- a. the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided* that:
  - b. if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or its designee giving due consideration to any industry-accepted market practice for U.S. dollar denominated floating rate notes at such time.

For the avoidance of doubt, the calculation of Compounded SOFR will exclude the Benchmark Replacement Adjustment.

9. "Corresponding Tenor" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.
10. "FRBNY" means the Federal Reserve Bank of New York.
11. "FRBNY's Website" means the website of the FRBNY at <http://www.newyorkfed.org> or any successor source.
12. "Interpolated Benchmark" with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.
13. "ISDA" means the International Swaps and Derivatives Association, Inc. or any successor thereto.
14. "ISDA Definitions" means the 2006 ISDA Definitions published by the ISDA or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.
15. "ISDA Fallback Adjustment" means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.
16. "ISDA Fallback Rate" means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.
17. "Reference Time" with respect to any determination of a Benchmark means (1) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (2) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.



18. "Relevant Governmental Body" means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.
19. "SOFR" means the daily Secured Overnight Financing Rate provided by the FRBNY, as the administrator of the benchmark (or a successor administrator), on the FRBNY's Website.
20. "Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.
21. "Term SOFR Administrator" means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or a successor administrator).
22. "Three-Month Term SOFR" means the greater of (i) the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions; and (ii) zero percent (0.00%).
23. "Three-Month Term SOFR Conventions" means any determination, decision or election by the Calculation Agent with respect to any technical, administrative or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of "Floating Interest Period", timing and frequency of determining Three-Month Term SOFR with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent decides may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).
24. "Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

(d) In the event that any Fixed Interest Payment Date during the Fixed Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and no additional dividends shall accrue as a result of that postponement. In the event that any Floating Interest Payment Date during the Floating Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and dividends shall accrue to but excluding the date dividends are paid. However, if the postponement would cause the day to fall in the next calendar month during the Floating Interest Period, the Floating Interest Payment Date shall instead be brought forward to the immediately preceding Business Day. The term “Business Day” means any day other than a Saturday or Sunday or any other day on which banking institutions in the State of Illinois or State of New York are generally authorized or required by law or executive order to be closed.

The Company will pay interest on this Subordinated Note to the Person who is the registered Holder at the close of business on the fifteenth calendar day prior to the applicable Interest Payment Date, except as provided in Section 2.10 of the Indenture with respect to Defaulted Interest. This Subordinated Note will be payable as to principal and interest at the office or agency of the Paying Agent, or, at the option of the Company, payment of interest may be made by check delivered to the Holder at its address set forth in the Subordinated Note Register or by wire transfer to an account appropriately designated by the Person entitled to payment; *provided*, that the Paying Agent will have received written notice of such account designation at least five Business Days prior to the date of such payment (subject to surrender of this Subordinated Note in the case of a payment of interest at Maturity).

3. Paying Agent and Registrar. The Trustee will act as the initial Paying Agent and Registrar through its offices presently located at [●]. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Subordination. The indebtedness of the Company evidenced by this Subordinated Note, including the principal thereof and interest thereon, is, to the extent and in the manner set forth in the Indenture, subordinate and junior in right of payment to obligations of the Company constituting the Senior Indebtedness (as defined in the Indenture) on the terms and subject to the terms and conditions as provided and set forth in Article XI of the Indenture and will rank *pari passu* in right of payment with all other Subordinated Notes. Holder, by the acceptance of this Subordinated Note, agrees to and will be bound by such provisions of the Indenture and authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided.

5. Redemption.

(a) The Company may, at its option, on any Interest Payment Date on or after September 30, 2024, redeem this Subordinated Note, in whole or in part, without premium or penalty, but in all cases in a principal amount with integral multiples of \$1,000. In addition, the Company may redeem all, but not a portion of the Subordinated Notes, at any time upon the occurrence of a Tier 2 Capital Event, Tax Event or an Investment Company Event. Any redemption of this Subordinated Note shall be subject to the prior approval of the Board of Governors of the Federal Reserve System (or its designee) or any successor agency, and any other bank regulatory agency, to the extent such approval shall then be required by law, regulation or policy. This Subordinated Note is not subject to redemption at the option of the Holder. The Redemption Price with respect to any redemption permitted under this Indenture will be equal to 100% of the principal amount of this Subordinated Note, or portion thereof, to be redeemed, plus accrued but unpaid interest and Additional Interest, if any, thereon to, but excluding, the Redemption Date.

(b) If less than the then outstanding principal amount of this Subordinated Note is redeemed, (i) a new note shall be issued representing the unredeemed portion without charge to the Holder thereof and (ii) such redemption shall be effected on a pro rata basis as to the Holder. For purposes of clarity, upon a partial redemption, a like percentage of the principal amount of every Subordinated Note held by every Holder shall be redeemed.

(c) Effectiveness of Redemption. If notice of redemption has been duly given and notwithstanding that any Subordinated Notes so called for redemption have not been surrendered for cancellation, on and after the Redemption Date interest shall cease to accrue on all Subordinated Notes so called for redemption, all Subordinated Notes so called for redemption shall no longer be deemed outstanding and all rights with respect to such Subordinated Notes shall forthwith on such Redemption Date cease and terminate (unless the Company shall default in the payment of the redemption price), except only the right of the Holder thereof to receive the amount payable on such redemption, without interest.

6. Events of Default; Acceleration. An “Event of Default” means any one of the events described in Section 4.01 of the Indenture. If an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture occurs, then the principal amount of all of the Outstanding Subordinated Notes, and accrued and unpaid interest, if any, on all Outstanding Subordinated Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or the Holder, and the Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. Notwithstanding the foregoing, because the Company will treat the Subordinated Notes as Tier 2 Capital, upon the occurrence of an Event of Default other than an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture, neither the Trustee nor the Holder may accelerate the Maturity of the Subordinated Notes and make the principal of, and any accrued and unpaid interest on, the Subordinated Notes, immediately due and payable. If any Event of Default occurs and is continuing, the Trustee may also pursue any other available remedy to collect the payment of principal of, and interest on, the Subordinated Notes then due and payable or to enforce the performance of any provision of the Subordinated Notes or the Indenture.

7. Failure to Make Payments. If the Company fails to make any payment of interest on this Subordinated Note when such interest becomes due and payable and such default continues for a period of 30 days, or if the Company fails to make any payment of the principal of this Subordinated Note when such principal becomes due and payable, the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holder, the whole amount then due and payable with respect to this Subordinated Note, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest at the rate or respective rates, as the case may be, provided for or with respect to this Subordinated Note or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by this Subordinated Note.

Upon an Event of Default, the Company may not declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock, make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to this Subordinated Note, or make any payments under any guarantee that ranks equal with or junior to this Subordinated Note, other than: (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of Company's capital stock or the exchange or conversion of one class or series of Company's capital stock for another class or series of Company's capital stock; (iv) the purchase of fractional interests in shares of Company's capital stock in accordance with the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of Company's common stock related to the issuance of common stock or rights under any benefit plans for Company's directors, officers or employees or any of Company's dividend reinvestment plans.

8. Denominations, Transfer, Exchange. The Subordinated Notes are issuable only in registered form without interest coupons in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. The transfer of this Subordinated Note may be registered and this Subordinated Note may be exchanged as provided in the Indenture. The Registrar may require the Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require the Holder to pay any taxes and fees required by law or permitted by the Indenture.

9. Charges and Transfer Taxes. No service charge will be made for any registration of transfer or exchange of this Subordinated Note, or any redemption or repayment of this Subordinated Note, or any conversion or exchange of this Subordinated Note for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of this Subordinated Note from the Holder requesting such transfer or exchange.

10. Persons Deemed Owners. The Company and the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Subordinated Note is registered as the owner hereof for all purposes, whether or not this Subordinated Note is overdue, and neither the Company, the Trustee nor any such agent will be affected by notice to the contrary.

11. Amendments; Waivers. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Subordinated Notes at any time by the Company and the Trustee with the consent of the holders of a majority in principal amount of the then Outstanding Subordinated Notes. The Indenture also contains provisions permitting the holders of specified percentages in principal amount of the then Outstanding Subordinated Notes, on behalf of the holders of all Subordinated Notes, to waive certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Subordinated Note will be conclusive and binding upon such Holder and upon all future holders of this Subordinated Note and of any Subordinated Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Subordinated Note.

12. No Impairment. No reference herein to the Indenture and no provision of this Subordinated Note or of the Indenture will alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (if any) and Additional Interest on this Subordinated Note at the times, place and rate as herein prescribed.

13. Sinking Fund; Convertibility. This Subordinated Note is not entitled to the benefit of any sinking fund. This Subordinated Note is not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any Subsidiary.

14. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Subordinated Note, or for any claim based thereon or otherwise in respect thereof, will be had against any past, present or future shareholder, employee, officer, or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Subordinated Note by the Holder and as part of the consideration for the issuance of this Subordinated Note.

15. Authentication. This Subordinated Note will not be valid until authenticated by the manual signature of the Trustee or an Authenticating Agent.

16. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act). Additional abbreviations may also be used though not in the above list.

17. Available Information. The Company will furnish to the Holder upon written request and without charge a copy of the Indenture. Requests by the Holder to the Company may be made to: Midland States Bancorp, Inc., 1201 Network Centre Drive, Effingham, Illinois 62401, Attention: Douglas J. Tucker, Corporate Counsel.

18. Governing Law. THIS SUBORDINATED NOTE WILL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY LAWS OR PRINCIPLES OF CONFLICT OF LAWS THAT WOULD APPLY THE LAWS OF A DIFFERENT JURISDICTION.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be duly executed.

**MIDLAND STATES BANCORP, INC.**

By: \_\_\_\_\_  
Name: Jeffrey G. Ludwig  
Title: Chief Executive Officer and President

*[Signature page to Certificate of Authentication]*

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Subordinated Notes of Midland States Bancorp, Inc., referred to in the within-mentioned Indenture:

**UMB BANK NATIONAL ASSOCIATION,**  
a national banking association, as Trustee

By: \_\_\_\_\_  
Name:  
Title:  
Dated:

*[Signature page to Certificate of Authentication]*

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**ASSIGNMENT FORM**

To assign this Subordinated Note, fill in the form below: (I) or (we) assign and transfer this Subordinated Note to:

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(Print or type assignee's name, address and zip code)

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(Insert assignee's social security or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Subordinated Note on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Your signature: \_\_\_\_\_  
(Sign exactly as your name appears on the face of this Subordinated Note)

Tax Identification No: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_  
(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

The undersigned certifies that it [is / is not] an Affiliate of the Company and that, to its knowledge, the proposed transferee [is / is not] an Affiliate of the Company.

In connection with any transfer or exchange of this Subordinated Note occurring prior to the date that is one year after the later of the date of original issuance of this Subordinated Note and the last date, if any, on which this Subordinated Note was owned by the Company or any Affiliate of the Company, the undersigned confirms that this Subordinated Note is being:

CHECK ONE BOX BELOW:

- (1) acquired for the undersigned's own account, without transfer;
- (2) transferred to the Company;
- (3) transferred in accordance and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act");
- (4) transferred under an effective registration statement under the Securities Act;



- (5) transferred in accordance with and in compliance with Regulation S under the Securities Act;
- (6) transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an “accredited investor” (as defined in Rule 501(a)(4) under the Securities Act), that has furnished a signed letter containing certain representations and agreements; or
- (7) transferred in accordance with another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Paying Agent will refuse to register this Subordinated Note in the name of any person other than the registered Holder thereof; provided, however, that if box (5), (6) or (7) is checked, the Paying Agent may require, prior to registering any such transfer of this Subordinated Note, in its sole discretion, such legal opinions, certifications and other information as the Paying Agent may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act such as the exemption provided by Rule 144 under such Act.

Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Subordinated Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Exhibit A-2**  
**Form of Global Subordinated Notes**

**MIDLAND STATES BANCORP, INC.**

**5.00% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE SEPTEMBER 30, 2029**

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER; (B) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).]

THIS SUBORDINATED NOTE IS A GLOBAL SUBORDINATED NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO AS NOMINEE OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SUBORDINATED NOTE IS EXCHANGEABLE FOR SUBORDINATED NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SUBORDINATED NOTE (OTHER THAN A TRANSFER OF THIS SUBORDINATED NOTE AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES SPECIFIED IN THE INDENTURE.

UNLESS THIS SUBORDINATED NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY SUBORDINATED NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO, OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS SUBORDINATED NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS SUBORDINATED NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH RESTRICTIONS SET FORTH IN THE INDENTURE IDENTIFIED HEREIN.

THE SECURITY AND THE OBLIGATIONS OF THE COMPANY AS EVIDENCED BY THIS SUBORDINATED NOTE (1) ARE NOT A DEPOSIT AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND AND (2) ARE SUBORDINATE IN THE RIGHT OF PAYMENT TO ALL SENIOR INDEBTEDNESS (AS DEFINED IN THE INDENTURE IDENTIFIED HEREIN).

**CERTAIN ERISA CONSIDERATIONS:**

THE HOLDER OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, ARE NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE AND HOLDING. ANY PURCHASER OR HOLDER OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER: (i) IT IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN TO WHICH TITLE I OF ERISA OR SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLANS, OR ANY OTHER PERSON OR ENTITY USING THE "PLAN ASSETS" OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE OR (ii) SUCH PURCHASE OR HOLDING WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH FULL EXEMPTIVE RELIEF IS NOT AVAILABLE UNDER APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

ANY FIDUCIARY OF ANY PLAN WHO IS CONSIDERING THE ACQUISITION OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN SHOULD CONSULT WITH HIS OR HER LEGAL COUNSEL PRIOR TO ACQUIRING THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN.

**MIDLAND STATES BANCORP, INC.****5.00% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE 2029**

**THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND.**

1. **Indenture; Holder.** This Subordinated Note is one of a duly authorized issue of notes of Midland States Bancorp, Inc., an Illinois corporation (the “Company”), designated as the “5.00% Fixed-to-Floating Rate Subordinated Notes due 2029” (the “Subordinated Notes”) in an aggregate principal amount of \$72,750,000 and initially issued on September 20, 2019. The Company has issued this Subordinated Note under that certain Indenture dated as of September 20, 2019, relating to the Subordinated Notes, as the same may be amended or supplemented from time to time (“Indenture”), between the Company and UMB Bank National Association, a national banking association, as Trustee (the “Trustee”). All capitalized terms not otherwise defined in this Subordinated Note will have the meanings assigned to them in the Indenture. The terms of this Subordinated Note include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). This Subordinated Note is subject to all such terms, and the Holder (as defined below) is referred to the Indenture and the Trust Indenture Act for a statement of such terms. To the extent any provision of this Subordinated Note irreconcilably conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

2. **Payment.** The Company, for value received, promises to pay to Cede & Co., or its registered assigns (the “Holder”), as nominee of The Depository Trust Company, the principal sum of [●] DOLLARS (U.S.) (\$[●]), plus accrued but unpaid interest on September 30, 2029 (“Stated Maturity”) and to pay interest thereon (i) from and including the original issue date of the Subordinated Notes, or from the most recent date to which interest has been paid or duly provided for, to but excluding September 30, 2024, at the rate of 5.00% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable semi-annually in arrears on March 30 and September 30 of each year (each, a “Fixed Interest Payment Date”), beginning March 30, 2020, and (ii) from and including September 30, 2024 to, but excluding the Stated Maturity or the early redemption date contemplated by Section 5 of this Subordinated Note (the “Floating Rate Period”), at the rate per annum, reset quarterly, equal to the Floating Interest Rate (as defined below) determined on the Floating Interest Determination Date (as defined below) of the applicable interest period plus 361 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on March 30, June 30, September 30 and December 30 (each quarterly period, a “Floating Interest Period”) of each year (each payment date, a “Floating Interest Payment Date”). Dollar amounts resulting from this calculation shall be rounded to the nearest cent, with one-half cent being rounded up. The term “Floating Interest Determination Date” means the date upon which the Floating Interest Rate is determined by the Calculation Agent pursuant to the Three-Month Term SOFR Conventions. The Company will pay all Additional Interest (as defined in the Indenture), if any, on the dates and in the amounts set forth in the Registration Rights Agreement (as defined in the Indenture).

- (a) An “Interest Payment Date” is either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable.
- (b) The “Floating Interest Rate” means:
  - (i) initially Three-Month Term SOFR (as defined below).
  - (ii) Notwithstanding the foregoing clause (i) of this Section 2(b):
    - (1) If the Calculation Agent determines prior to the relevant Floating Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date (each of such terms as defined below) have occurred with respect to Three-Month Term SOFR, then the Company shall promptly provide notice of such determination to the Holder and Section 2(c) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the Floating Interest Rate payable on the Subordinated Notes during a relevant Floating Interest Period.
    - (2) However, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, but for any reason the Benchmark Replacement has not been determined as of the relevant Floating Interest Determination Date, the Floating Interest Rate for the applicable Floating Interest Period will be equal to the Floating Interest Rate on the last Floating Interest Determination Date for the Subordinated Notes, as determined by the Calculation Agent.
  - (iii) If the then-current Benchmark is Three-Month Term SOFR and any of the foregoing provisions concerning the calculation of the interest rate and the payment of interest during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions (as defined below) determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply.
- (c) Effect of Benchmark Transition Event.
  - (i) If the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time (as defined below) in respect of any determination of the Benchmark (as defined below) on any date, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Subordinated Notes during the relevant Floating Interest Period in respect of such determination on such date and all determinations on all subsequent dates.

- (ii) In connection with the implementation of a Benchmark Replacement, the Company will have the right to make Benchmark Replacement Conforming Changes from time to time.
- (iii) Any determination, decision or election that may be made by the Calculation Agent pursuant to the benchmark transition provisions set forth herein, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action or any selection:
  - (1) will be conclusive and binding absent manifest error;
  - (2) if made by the Company, will be made in the Company's sole discretion; and
  - (3) notwithstanding anything to the contrary in this Subordinated Note or the Indenture, shall become effective without consent from the Holder or any other party.
- (iv) For the avoidance of doubt, after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, interest payable on this Subordinated Note for the Floating Rate Period will be an annual rate equal to the sum of the applicable Benchmark Replacement and the spread specified on the face hereof.
- (iv) As used in this Subordinated Note:
  - 1. "Benchmark" means, initially, Three-Month Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement.
  - 2. "Benchmark Replacement" means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then "Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- a. Compounded SOFR;
  - b. the sum of: (i) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (ii) the Benchmark Replacement Adjustment;
  - c. the sum of: (i) the ISDA Fallback Rate and (ii) the Benchmark Replacement Adjustment;
  - d. the sum of: (i) the alternate rate of interest that has been selected by the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated floating rate notes at such time and (ii) the Benchmark Replacement Adjustment.
3. “Benchmark Replacement Adjustment” means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:
- a. the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
  - b. if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
  - c. the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.
4. “Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Floating Interest Period,” timing and frequency of determining rates with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors and other administrative matters) that the Company decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).

5. “Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:
  - a. in the case of clause (a) of the definition of “Benchmark Transition Event,” the relevant Reference Time in respect of any determination;
  - b. in the case of clause (b) or (c) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
  - c. in the case of clause (d) of the definition of “Benchmark Transition Event,” the date of such public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for purposes of such determination.

6. “Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:
  - a. if the Benchmark is Three-Month Term SOFR, (i) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (ii) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (iii) the Calculation Agent determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;
  - b. a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;



- c. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
  - d. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.
7. "Calculation Agent" means such bank or other entity (which may be the Company or one of its Affiliates) as may be appointed by the Company, in writing, to act as Calculation Agent for the Subordinated Notes during the Floating Rate Period, and who has accepted such appointment in writing.
8. "Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Floating Interest Period) being established by the Company in accordance with:
- a. the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided* that:
  - b. if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or its designee giving due consideration to any industry-accepted market practice for U.S. dollar denominated floating rate notes at such time.

For the avoidance of doubt, the calculation of Compounded SOFR will exclude the Benchmark Replacement Adjustment.

9. “Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.
10. “FRBNY” means the Federal Reserve Bank of New York.
11. “FRBNY’s Website” means the website of the FRBNY at <http://www.newyorkfed.org> or any successor source.
12. “Interpolated Benchmark” with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.
13. “ISDA” means the International Swaps and Derivatives Association, Inc. or any successor thereto.
14. “ISDA Definitions” means the 2006 ISDA Definitions published by the ISDA or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.
15. “ISDA Fallback Adjustment” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.
16. “ISDA Fallback Rate” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.
17. “Reference Time” with respect to any determination of a Benchmark means (1) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (2) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.

18. "Relevant Governmental Body" means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.
19. "SOFR" means the daily Secured Overnight Financing Rate provided by the FRBNY, as the administrator of the benchmark (or a successor administrator), on the FRBNY's Website.
20. "Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.
21. "Term SOFR Administrator" means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or a successor administrator).
22. "Three-Month Term SOFR" means the greater of (i) the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions; and (ii) zero percent (0.00%).
23. "Three-Month Term SOFR Conventions" means any determination, decision or election by the Calculation Agent with respect to any technical, administrative or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of "Floating Interest Period", timing and frequency of determining Three-Month Term SOFR with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent decides may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).
24. "Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

(d) In the event that any Fixed Interest Payment Date during the Fixed Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and no additional dividends shall accrue as a result of that postponement. In the event that any Floating Interest Payment Date during the Floating Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and dividends shall accrue to but excluding the date dividends are paid. However, if the postponement would cause the day to fall in the next calendar month during the Floating Interest Period, the Floating Interest Payment Date shall instead be brought forward to the immediately preceding Business Day. The term "Business Day" means any day other than a Saturday or Sunday or any other day on which banking institutions in the State of Illinois or State of New York are generally authorized or required by law or executive order to be closed.

The Company will pay interest on this Subordinated Note to the Person who is the registered Holder at the close of business on the fifteenth calendar day prior to the applicable Interest Payment Date, except as provided in Section 2.10 of the Indenture with respect to Defaulted Interest. This Subordinated Note will be payable as to principal and interest at the office or agency of the Paying Agent, or, at the option of the Company, payment of interest may be made by check delivered to the Holder at its address set forth in the Subordinated Note Register or by wire transfer to an account appropriately designated by the Person entitled to payment; *provided*, that the Paying Agent will have received written notice of such account designation at least five Business Days prior to the date of such payment (subject to surrender of this Subordinated Note in the case of a payment of interest at Maturity).

3. Paying Agent and Registrar. The Trustee will act as the initial Paying Agent and Registrar through its offices presently located at [●]. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Subordination. The indebtedness of the Company evidenced by this Subordinated Note, including the principal thereof and interest thereon, is, to the extent and in the manner set forth in the Indenture, subordinate and junior in right of payment to obligations of the Company constituting the Senior Indebtedness (as defined in the Indenture) on the terms and subject to the terms and conditions as provided and set forth in Article XI of the Indenture and will rank *pari passu* in right of payment with all other Subordinated Notes. Holder, by the acceptance of this Subordinated Note, agrees to and will be bound by such provisions of the Indenture and authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided.

5. Redemption.

(a) The Company may, at its option, on any Interest Payment Date on or after September 30, 2024, redeem this Subordinated Note, in whole or in part, without premium or penalty, but in all cases in a principal amount with integral multiples of \$1,000. In addition, the Company may redeem all, but not a portion of the Subordinated Notes, at any time upon the occurrence of a Tier 2 Capital Event, Tax Event or an Investment Company Event. Any redemption of this Subordinated Note shall be subject to the prior approval of the Board of Governors of the Federal Reserve System (or its designee) or any successor agency, and any other bank regulatory agency, to the extent such approval shall then be required by law, regulation or policy. This Subordinated Note is not subject to redemption at the option of the Holder. The Redemption Price with respect to any redemption permitted under this Indenture will be equal to 100% of the principal amount of this Subordinated Note, or portion thereof, to be redeemed, plus accrued but unpaid interest and Additional Interest, if any, thereon to, but excluding, the Redemption Date.

(b) If less than the then outstanding principal amount of this Subordinated Note is redeemed, (i) a new note shall be issued representing the unredeemed portion without charge to the Holder thereof and (ii) such redemption shall be effected on a pro rata basis as to the Holder. For purposes of clarity, upon a partial redemption, a like percentage of the principal amount of every Subordinated Note held by every Holder shall be redeemed.

(c) Effectiveness of Redemption. If notice of redemption has been duly given and notwithstanding that any Subordinated Notes so called for redemption have not been surrendered for cancellation, on and after the Redemption Date interest shall cease to accrue on all Subordinated Notes so called for redemption, all Subordinated Notes so called for redemption shall no longer be deemed outstanding and all rights with respect to such Subordinated Notes shall forthwith on such Redemption Date cease and terminate (unless the Company shall default in the payment of the redemption price), except only the right of the Holder thereof to receive the amount payable on such redemption, without interest.

6. Events of Default; Acceleration. An “Event of Default” means any one of the events described in Section 4.01 of the Indenture. If an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture occurs, then the principal amount of all of the Outstanding Subordinated Notes, and accrued and unpaid interest, if any, on all Outstanding Subordinated Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or the Holder, and the Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. Notwithstanding the foregoing, because the Company will treat the Subordinated Notes as Tier 2 Capital, upon the occurrence of an Event of Default other than an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture, neither the Trustee nor the Holder may accelerate the Maturity of the Subordinated Notes and make the principal of, and any accrued and unpaid interest on, the Subordinated Notes, immediately due and payable. If any Event of Default occurs and is continuing, the Trustee may also pursue any other available remedy to collect the payment of principal of, and interest on, the Subordinated Notes then due and payable or to enforce the performance of any provision of the Subordinated Notes or the Indenture.

7. Failure to Make Payments. If the Company fails to make any payment of interest on this Subordinated Note when such interest becomes due and payable and such default continues for a period of 30 days, or if the Company fails to make any payment of the principal of this Subordinated Note when such principal becomes due and payable, the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holder, the whole amount then due and payable with respect to this Subordinated Note, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest at the rate or respective rates, as the case may be, provided for or with respect to this Subordinated Note or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by this Subordinated Note.

Upon an Event of Default, the Company may not declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock, make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to this Subordinated Note, or make any payments under any guarantee that ranks equal with or junior to this Subordinated Note, other than: (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of Company's capital stock or the exchange or conversion of one class or series of Company's capital stock for another class or series of Company's capital stock; (iv) the purchase of fractional interests in shares of Company's capital stock in accordance with the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of Company's common stock related to the issuance of common stock or rights under any benefit plans for Company's directors, officers or employees or any of Company's dividend reinvestment plans.

8. Denominations, Transfer, Exchange. The Subordinated Notes are issuable only in registered form without interest coupons in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. The transfer of this Subordinated Note may be registered and this Subordinated Note may be exchanged as provided in the Indenture. The Registrar may require the Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require the Holder to pay any taxes and fees required by law or permitted by the Indenture.

9. Charges and Transfer Taxes. No service charge will be made for any registration of transfer or exchange of this Subordinated Note, or any redemption or repayment of this Subordinated Note, or any conversion or exchange of this Subordinated Note for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of this Subordinated Note from the Holder requesting such transfer or exchange.

10. Persons Deemed Owners. The Company and the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Subordinated Note is registered as the owner hereof for all purposes, whether or not this Subordinated Note is overdue, and neither the Company, the Trustee nor any such agent will be affected by notice to the contrary.

11. Amendments; Waivers. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Subordinated Notes at any time by the Company and the Trustee with the consent of the holders of a majority in principal amount of the then Outstanding Subordinated Notes. The Indenture also contains provisions permitting the holders of specified percentages in principal amount of the then Outstanding Subordinated Notes, on behalf of the holders of all Subordinated Notes, to waive certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Subordinated Note will be conclusive and binding upon such Holder and upon all future holders of this Subordinated Note and of any Subordinated Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Subordinated Note.

12. No Impairment. No reference herein to the Indenture and no provision of this Subordinated Note or of the Indenture will alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (if any) and Additional Interest on this Subordinated Note at the times, place and rate as herein prescribed.

13. Sinking Fund; Convertibility. This Subordinated Note is not entitled to the benefit of any sinking fund. This Subordinated Note is not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any Subsidiary.

14. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Subordinated Note, or for any claim based thereon or otherwise in respect thereof, will be had against any past, present or future shareholder, employee, officer, or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Subordinated Note by the Holder and as part of the consideration for the issuance of this Subordinated Note.

15. Authentication. This Subordinated Note will not be valid until authenticated by the manual signature of the Trustee or an Authenticating Agent.

16. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act). Additional abbreviations may also be used though not in the above list.

17. Available Information. The Company will furnish to the Holder upon written request and without charge a copy of the Indenture. Requests by the Holder to the Company may be made to: Midland States Bancorp, Inc., 1201 Network Centre Drive, Effingham, Illinois 62401, Attention: Douglas J. Tucker, Corporate Counsel.

18. Governing Law. THIS SUBORDINATED NOTE WILL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY LAWS OR PRINCIPLES OF CONFLICT OF LAWS THAT WOULD APPLY THE LAWS OF A DIFFERENT JURISDICTION.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be duly executed.

**MIDLAND STATES BANCORP, INC.**

By: \_\_\_\_\_  
Name: Jeffrey G. Ludwig  
Title: Chief Executive Officer and President

*[Signature page to Subordinated Note]*

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Subordinated Notes of Midland States Bancorp, Inc., referred to in the within-mentioned Indenture:

**UMB BANK NATIONAL ASSOCIATION,**  
a national banking association, as Trustee

By: \_\_\_\_\_  
Name:  
Title:  
Dated:

*[Signature page to Certificate of Authentication]*

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**ASSIGNMENT FORM**

To assign this Subordinated Note, fill in the form below: (I) or (we) assign and transfer this Subordinated Note to:

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(Print or type assignee's name, address and zip code)

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(Insert assignee's social security or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Subordinated Note on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Your signature: \_\_\_\_\_  
(Sign exactly as your name appears on the face of this Subordinated Note)

Tax Identification No: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_  
(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

The undersigned certifies that it [is / is not] an Affiliate of the Company and that, to its knowledge, the proposed transferee [is / is not] an Affiliate of the Company.

In connection with any transfer or exchange of this Subordinated Note occurring prior to the date that is one year after the later of the date of original issuance of this Subordinated Note and the last date, if any, on which this Subordinated Note was owned by the Company or any Affiliate of the Company, the undersigned confirms that this Subordinated Note is being:

CHECK ONE BOX BELOW:

- (1) acquired for the undersigned's own account, without transfer;
- (2) transferred to the Company;
- (3) transferred in accordance and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act");
- (4) transferred under an effective registration statement under the Securities Act;

- (5) transferred in accordance with and in compliance with Regulation S under the Securities Act;
- (6) transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an “accredited investor” (as defined in Rule 501(a)(4) under the Securities Act), that has furnished a signed letter containing certain representations and agreements; or
- (7) transferred in accordance with another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Paying Agent will refuse to register this Subordinated Note in the name of any person other than the registered Holder thereof; provided, however, that if box (5), (6) or (7) is checked, the Paying Agent may require, prior to registering any such transfer of this Subordinated Note, in its sole discretion, such legal opinions, certifications and other information as the Paying Agent may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act such as the exemption provided by Rule 144 under such Act.

Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Subordinated Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SUBORDINATED NOTE

The following increases or decreases in this Global Subordinated Note have been made:

Date of Exchange	Amount of decrease in principal amount of this Global Subordinated Note	Amount of increase in principal amount of this Global Subordinated Note	Principal amount of this Global Subordinated Note following such decrease or increase	Signature of authorized officer of Trustee or Notes Custodian
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**MIDLAND STATES BANCORP, INC.**

**As Issuer,**

**and**

**UMB Bank National Association**

**As Trustee**

**INDENTURE**

**Dated as of September 20, 2019**

**5.50% Fixed-to-Floating Rate Subordinated Notes due 2034**

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**CROSS-REFERENCE TABLE**

Trust Indenture Act Section	Indenture Section
§310(a)(1)	5.08
(a)(2)	5.08
(a)(3)	Not applicable
(a)(4)	Not applicable
(a)(5)	5.08
(b)	5.08, 5.09
§311(a)	5.05
(b)	5.05
§312(a)	6.01
(b)	6.02
(c)	6.02
§313(a)	6.03
(b)(1)	6.03
(b)(2)	6.03
(c)	6.03
(d)	6.03
§314(a)	6.04
(a)(4)	9.08
(b)	Not applicable
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	Not applicable
(d)	Not applicable
(e)	1.02
(f)	Not applicable
§315(a)	5.01, 5.02
(b)	5.03
(c)	5.01
(d)	5.01, 5.02
(e)	4.13
§316(a)	4.11, 4.12
(b)	4.07
(c)	1.04
§317(a)(1)	4.02
(a)(2)	4.03
(b)	9.03
§318(a)	1.07
(b)	1.07
(c)	1.07

Note: This Cross-Reference table will not, for any purpose, be deemed part of this Indenture.

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## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE I DEFINITIONS AND INCORPORATION BY REFERENCE	1
Section 1.01    Definitions	1
Section 1.02    Compliance Certificates and Opinions	13
Section 1.03    Form of Documents Delivered to Trustee	14
Section 1.04    Acts of Holders	15
Section 1.05    Required Notices or Demands	16
Section 1.06    Incorporation by Reference of Trust Indenture Act; Conflicts	17
Section 1.07    Effect of Headings and Table of Contents	18
Section 1.08    Successors and Assigns	18
Section 1.09    Severability	18
Section 1.10    Benefits of Indenture	18
Section 1.11    Governing Law	18
Section 1.12    Legal Holidays	19
Section 1.13    Counterparts; Electronic Transmission	19
Section 1.14    Immunity of Certain Persons	19
Section 1.15    Waiver of Jury Trial	19
Section 1.16    Force Majeure	19
Section 1.17    No Sinking Fund	20
Section 1.18    Rules of Construction	20
ARTICLE II THE SUBORDINATED NOTES	20
Section 2.01    Forms Generally	20
Section 2.02    Definitive Subordinated Notes	21
Section 2.03    Global Subordinated Notes	21
Section 2.04    Restricted Subordinated Notes	21
Section 2.05    Execution and Authentication	22
Section 2.06    Registrar and Paying Agent	23
Section 2.07    Registration of Transfer and Exchange	23
Section 2.08    Exchange Offer	27
Section 2.09    Mutilated, Destroyed, Lost and Stolen Subordinated Notes	28
Section 2.10    Payment of Interest; Rights to Interest Preserved	28
Section 2.11    Persons Deemed Owners	30
Section 2.12    Cancellation	30
Section 2.13    Computation of Interest	30
Section 2.14    CUSIP Numbers	31
ARTICLE III SATISFACTION AND DISCHARGE OF INDENTURE	31
Section 3.01    Satisfaction and Discharge	31
Section 3.02    Defeasance and Covenant Defeasance	32
Section 3.03    Application of Trust Money	35
Section 3.04    Reinstatement	35
Section 3.05    Effect on Subordination Provisions	35

ARTICLE IV REMEDIES		36
Section 4.01	Events of Default; Acceleration	36
Section 4.02	Failure to Make Payments	37
Section 4.03	Trustee May File Proofs of Claim	38
Section 4.04	Trustee May Enforce Claims Without Possession of Subordinated Notes	39
Section 4.05	Application of Money Collected	39
Section 4.06	Limitation on Suits	39
Section 4.07	Unconditional Right of Holders to Payments	40
Section 4.08	Restoration of Rights and Remedies	40
Section 4.09	Rights and Remedies Cumulative	40
Section 4.10	Delay or Omission Not Waiver	41
Section 4.11	Control by Holders	41
Section 4.12	Waiver of Past Defaults	41
Section 4.13	Undertaking for Costs	42
ARTICLE V THE TRUSTEE		42
Section 5.01	Duties of Trustee	42
Section 5.02	Certain Rights of Trustee	43
Section 5.03	Notice of Defaults	45
Section 5.04	Not Responsible for Recitals or Issuance of Subordinated Notes	45
Section 5.05	May Hold Subordinated Notes	45
Section 5.06	Money Held in Trust	46
Section 5.07	Compensation and Reimbursement	46
Section 5.08	Corporate Trustee Required; Eligibility	47
Section 5.09	Resignation and Removal; Appointment of Successor	47
Section 5.10	Acceptance of Appointment by Successor	49
Section 5.11	Merger, Conversion, Consolidation or Succession to Business	50
Section 5.12	Appointment of Authenticating Agent	50
Section 5.13	Preferred Collection of Claims against Company	51
ARTICLE VI HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY		52
Section 6.01	Holder Lists	52
Section 6.02	Preservation of Information; Communications to Holders	52
Section 6.03	Reports by Trustee	52
Section 6.04	Reports by Company	52
ARTICLE VII SUCCESSORS		54
Section 7.01	Merger, Consolidation or Sale of All or Substantially All Assets	54
Section 7.02	Successor Person Substituted for Company	54
ARTICLE VIII SUPPLEMENTAL INDENTURES		55
Section 8.01	Supplemental Indentures without Consent of Holders	55
Section 8.02	Supplemental Indentures with Consent of Holders	56
Section 8.03	Execution of Supplemental Indentures	57
Section 8.04	Effect of Supplemental Indentures	57
Section 8.05	Reference in Subordinated Notes to Supplemental Indentures	57
Section 8.06	Effect on Senior Indebtedness	57
Section 8.07	Conformity with Trust Indenture Act	57



ARTICLE IX COVENANTS		58
Section 9.01	Payment of Principal and Interest	58
Section 9.02	Maintenance of Office	58
Section 9.03	Money for Subordinated Notes Payments to Be Held in Trust	59
Section 9.04	Corporate Existence	60
Section 9.05	Maintenance of Properties	60
Section 9.06	Dividends	60
Section 9.07	Waiver of Certain Covenants	60
Section 9.08	Company Statement as to Compliance	61
Section 9.09	Tier 2 Capital	61
ARTICLE X REDEMPTION OF SECURITIES		61
Section 10.01	Applicability of Article	61
Section 10.02	Election to Redeem; Notice to Trustee	62
Section 10.03	Selection by Trustee of Subordinated Notes to be Redeemed	62
Section 10.04	Notice of Redemption	63
Section 10.05	Deposit of Redemption Price	64
Section 10.06	Subordinated Notes Payable on Redemption Date	64
Section 10.07	Subordinated Notes Redeemed in Part	64
ARTICLE XI SUBORDINATION OF SECURITIES		65
Section 11.01	Agreement to Subordinate	65
Section 11.02	Distribution of Assets	65
Section 11.03	Default With Respect to Senior Indebtedness	67
Section 11.04	No Impairment	67
Section 11.05	Effectuation of Subordination Provisions	67
Section 11.06	Notice to Trustee	67
Section 11.07	Trustee Knowledge of Senior Indebtedness	68
Section 11.08	Senior Indebtedness to Trustee	68
Section 11.09	Subordination Not Applicable to Trustee Compensation	68

This INDENTURE dated as of September 20, 2019 is between Midland States Bancorp, Inc., an Illinois corporation (the “Company”), and UMB Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

## **RECITALS**

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for an issue of \$27,250,000 in aggregate principal amount of 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034, subject to the terms and conditions set forth in this Indenture.

NOW, THEREFORE, in order to declare the terms and conditions upon which the Subordinated Notes are authenticated, issued and delivered, and in consideration of the premises, and of the purchase and acceptance of the Subordinated Notes by the Holders thereof, the Company and the Trustee agree as follows for the benefit of each other and for the benefit of the respective Holders from time to time of the Subordinated Notes.

## **ARTICLE I** **DEFINITIONS AND INCORPORATION BY REFERENCE**

### Section 1.01 Definitions.

Except as otherwise expressly provided in this Indenture or unless the context otherwise requires, the terms defined in this Section for all purposes of this Indenture, any Company Order, any Board Resolution, and any indenture supplemental hereto will have the respective meanings specified in this Section.

“Act,” when used with respect to any Holders, is defined in Section 1.04.

“Additional Interest” has the meaning set forth in the Registration Rights Agreement.

“Affiliate” means, with respect to any specified Person, 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.

“Applicable Procedures” means, with respect to any transfer or exchange of or for beneficial interests in any Global Subordinated Note, the rules and procedures of the Depository that apply to such transfer or exchange.

“Authenticating Agent” means any Person authorized by the Trustee in accordance with Section 5.12 to act on behalf of the Trustee to authenticate Subordinated Notes.

“Authorized Officer” means each of the Chairman of the Board, the Chief Executive Officer, the President, any Senior Vice President, the Chief Financial Officer and the Chief Accounting Officer of the Company.

“Bankruptcy Laws” mean Title 11, United States Code (11 U.S.C. §§101 et seq.) or any similar federal or state law for the relief of debtors.

“Benchmark” means, initially, Three-Month Term SOFR; *provided* that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement.

“Benchmark Replacement” means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then “Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- (a) Compounded SOFR;
- (b) the sum of: (i) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (ii) the Benchmark Replacement Adjustment;
- (c) the sum of: (i) the ISDA Fallback Rate and (ii) the Benchmark Replacement Adjustment;
- (d) the sum of: (i) the alternate rate of interest that has been selected by the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated floating rate notes at such time and (ii) the Benchmark Replacement Adjustment.

“Benchmark Replacement Adjustment” means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (b) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
- (c) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Floating Interest Period,” timing and frequency of determining rates with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors and other administrative matters) that the Company decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) of the definition of “Benchmark Transition Event,” the relevant Reference Time in respect of any determination;
- (b) in the case of clause (b) or (c) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (c) in the case of clause (d) of the definition of “Benchmark Transition Event,” the date of such public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for purposes of such determination.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (a) if the Benchmark is Three-Month Term SOFR, (i) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (ii) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (iii) the Calculation Agent determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;

- (b) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (d) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

“Board of Directors” means, as to any Person, the board of directors, or similar governing body, of such Person or any duly authorized committee thereof.

“Board Resolution” means one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, delivered to the Trustee.

“Business Day” means any day other than a Saturday, Sunday or other day on which banking institutions in the State of Illinois or the State of New York are authorized or obligated by law, regulation or executive order to close.

“Calculation Agent” means such bank or other entity (which may be the Company or one of its Affiliates) as may be appointed by the Company, in writing, to act as Calculation Agent for the Subordinated Notes during the Floating Rate Period, and who has accepted such appointment in writing.

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

“Company” is defined in the preamble to this Indenture.

“Company Request” and “Company Order” mean, respectively, a written request or order, as the case may be, signed on behalf of the Company by an Authorized Officer and delivered to the Trustee.

“Compounded SOFR” means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Floating Interest Period) being established by the Company in accordance with:

- (a) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided that*:
- (b) if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or its designee giving due consideration to any industry-accepted market practice for U.S. dollar denominated floating rate notes at such time.

For the avoidance of doubt, the calculation of Compounded SOFR will exclude the Benchmark Replacement Adjustment.

“Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.

“Corporate Trust Office” means the address of the Trustee specified in Section 1.05 or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the designated address of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“Covenant Defeasance” is defined in Section 3.02(3).

“Defaulted Interest” is defined in Section 2.10.

“Definitive Subordinated Notes” means, individually and collectively, each Restricted Definitive Subordinated Note and each Unrestricted Definitive Subordinated Note, substantially in the form of Exhibit A-1 hereto, issued under this Indenture.

“Depository” means, with respect to any Subordinated Note issuable or issued in whole or in part in global form, the Person designated as depository by the Company in accordance with this Indenture, and any and all successors thereto appointed as Depository under this Indenture. The initial Depository shall be The Depository Trust Company.

“Dollars” or “\$” means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States.

“Event of Default” is defined in Section 4.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute thereto.

“Exchange Notes” means the Subordinated Notes issued in the Exchange Offer in accordance with Section 2.08.

“Exchange Offer” has the meaning set forth in the Registration Rights Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System or any successor regulatory authority with jurisdiction over bank holding companies.

“Fixed Interest Payment Date” means March 30 and September 30 of each year, beginning March 30, 2020.

“Floating Interest Determination Date” means the date upon which the Floating Interest Rate is determined by the Calculation Agent pursuant to the Three-Month Term SOFR Conventions.

“Floating Interest Payment Date” means March 30, June 30, September 30 and December 30 of each year, beginning September 30, 2029.

“Floating Interest Period” means each three-month period beginning on each Floating Interest Payment Date.

“Floating Interest Rate” means:

- (i) initially Three-Month Term SOFR;
- (ii) notwithstanding the foregoing clause (i) of this definition:
  - (1) If the Calculation Agent determines prior to the relevant Floating Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, then the Company shall promptly provide notice of such determination to the Holder and Section 2(c) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the Floating Interest Rate payable on the Subordinated Notes during a relevant Floating Interest Period.
  - (2) However, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, but for any reason the Benchmark Replacement has not been determined as of the relevant Floating Interest Determination Date, the Floating Interest Rate for the applicable Floating Interest Period will be equal to the Floating Interest Rate on the last Floating Interest Determination Date for the Subordinated Notes, as determined by the Calculation Agent.

- (iii) If the then-current Benchmark is Three-Month Term SOFR and any of the foregoing provisions concerning the calculation of the interest rate and the payment of interest during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions (as defined below) determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply.

“FRBNY” means the Federal Reserve Bank of New York.

“FRBNY’s Website” means the website of the FRBNY at <http://www.newyorkfed.org> or any successor source.

“GAAP” means accounting principles generally accepted in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, the statements and pronouncements of the Financial Accounting Standards Board and such other statements by such other entities (including the Commission) as have been accepted by a significant segment of the accounting profession, which are applicable at the date of this Indenture, consistently applied.

“Global Subordinated Notes” means, individually and collectively, each Restricted Global Subordinated Note and each Unrestricted Global Subordinated Note, substantially in the form of Exhibit A-2 hereto, issued under this Indenture.

“Government Obligations” means securities which are direct obligations of the United States of America in each case where the payment or payments thereunder are supported by the full faith and credit of the United States of America.

“Holder” means the Person in whose name the Subordinated Note is registered in the Subordinated Note Register.

“Indenture” means this Indenture, as amended and supplemented from time to time in accordance with its terms.

“Initial Notes” means the \$27,250,000 in aggregate principal amount of the Company’s 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034 issued under this Indenture on the date hereof.

“Interest Payment Date” means either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable.

“Interpolated Benchmark” with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.



“Investment Company Event” means the receipt by the Company of a legal opinion from counsel experienced in such matters to the effect that there is more than an insubstantial risk that the Company is or, within 90 days of the date of such legal opinion will be, considered an “investment company” that is required to be registered under the Investment Company Act of 1940, as amended.

“ISDA” means the International Swaps and Derivatives Association, Inc. or any successor thereto.

“ISDA Definitions” means the 2006 ISDA Definitions published by the ISDA or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“ISDA Fallback Adjustment” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

“ISDA Fallback Rate” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

“Legal Defeasance” is defined in Section 3.02(2).

“Letter of Transmittal” means the letter of transmittal to be prepared by the Company and sent to all Holders for use by such Holders in connection with an Exchange Offer.

“Maturity” means the date on which the principal of a Subordinated Note or an installment of principal becomes due and payable as provided in or under this Indenture or such Subordinated Note, whether at the Stated Maturity or by an acceleration of the maturity of such Subordinated Note in accordance with the terms of such Subordinated Note, upon redemption at the option of the Company, upon repurchase or repayment or otherwise, and includes a Redemption Date for such Subordinated Note and a date fixed for the repurchase or repayment of such Subordinated Note at the option of the Holder.

“Officer” means, with respect to any Person, the chairman of the board, vice chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of such Person.

“Officers’ Certificate” means a certificate signed on behalf of the Company by two Officers of the Company, at least one of whom must be the principal executive officer, the principal financial officer or the principal accounting officer of the Company, that complies with the requirements of Section 1.02 and is delivered to the Trustee.

“Opinion of Counsel” means a written opinion from legal counsel, which opinion meets the requirements of Section 1.02. The counsel may be an employee of or counsel to the Company or any Subsidiary of the Company.

“Outstanding,” when used with respect to any Subordinated Notes, means, as of the date of determination, all such Subordinated Notes theretofore authenticated and delivered under this Indenture, except (1) any such Subordinated Note theretofore cancelled by the Trustee or the Registrar or delivered to the Trustee or the Registrar for cancellation; (2) any such Subordinated Note for whose payment at the Maturity thereof money in the necessary amount has been theretofore deposited in accordance with this Indenture (other than in accordance with Section 3.02) with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company will act as its own Paying Agent) for the Holders of such Subordinated Notes, *provided* that, if such Subordinated Notes are to be redeemed, notice of such redemption has been duly given in accordance with this Indenture or provision therefor satisfactory to the Trustee has been made; (3) any such Subordinated Note with respect to which the Company has effected Legal Defeasance or Covenant Defeasance in accordance with Section 3.02, except to the extent provided in Section 3.02; and (4) any such Subordinated Note that has been paid in accordance with Section 2.09 or in exchange for or in lieu of which other Subordinated Notes have been authenticated and delivered under this Indenture, unless there will have been presented to the Trustee proof satisfactory to the Trustee that such Subordinated Note is held by a bona fide purchaser in whose hands such Subordinated Note is a valid obligation of the Company; *provided, however*, in all cases, that in determining whether the Holders of the requisite principal amount of Outstanding Subordinated Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Subordinated Notes owned by the Company or any Affiliate of the Company will be disregarded and deemed not to be Outstanding. Subordinated Notes so owned that will have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Subordinated Notes and that the pledgee is not the Company or an Affiliate of the Company.

“Participating Broker-Dealer” has the meaning set forth in the Registration Rights Agreement.

“Paying Agent” is defined in Section 2.06.

“Person” mean any individual, corporation, partnership, association, limited liability company, other company, statutory trust, business trust, joint venture, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment,” with respect to any Subordinated Note, means the place or places where the principal of, or interest on, such Subordinated Note are payable as provided in or under this Indenture or such Subordinated Note.

“Private Placement Legend” means the legend set forth in Section 2.04 of this Indenture to be placed on all Subordinated Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

“Purchase Agreement” means the Subordinated Note Purchase Agreement, dated as of September 20, 2019, by and among the Company and the purchasers identified therein.

“Redemption Date” with respect to any Subordinated Note or portion thereof to be redeemed, means the date fixed for such redemption by or under this Indenture or such Subordinated Note.

“Redemption Price” with respect to any Subordinated Note or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or under this Indenture or such Subordinated Note.

“Reference Time” with respect to any determination of a Benchmark means (1) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (2) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.

“Registrar” is defined in Section 2.06.

“Registration Rights Agreement” means the Registration Rights Agreement in the form attached as Exhibit B to the Purchase Agreement, dated as of the date of this Indenture, by and among the Company and the purchasers identified therein.

“Regular Record Date,” with respect to any Interest Payment Date, means the close of business on the fifteenth calendar day prior to such Interest Payment Date, without regard to whether the Regular Record Date is a Business Day.

“Relevant Governmental Body” means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.

“Responsible Officer” means, when used with respect to the Trustee, any officer assigned to the Corporate Trust Office who has direct responsibility for the administration of this Indenture and, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such Person’s knowledge of and familiarity with the particular subject.

“Restricted Definitive Subordinated Note” means a Definitive Subordinated Note bearing, or that is required to bear, the Private Placement Legend.

“Restricted Global Subordinated Note” means a Global Subordinated Note bearing, or that is required to bear, the Private Placement Legend,

“Restricted Subordinated Note” means a Restricted Global Subordinated Note or a Restricted Definitive Subordinated Note.

“Rule 144” means Rule 144 promulgated under the Securities Act.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, or any successor statute thereto.

“Senior Indebtedness” means the principal of, and premium, if any, and interest, including interest accruing after the commencement of any bankruptcy proceeding relating to the Company, on, or substantially similar payments the Company makes in respect of the following categories of debt, whether that debt was outstanding on the date of execution of this Indenture or thereafter incurred, created or assumed: (1) all indebtedness of the Company for borrowed money, whether or not evidenced by notes, debentures, bonds, securities or other similar instruments issued under the provisions of any indenture, fiscal agency agreement, debenture or note purchase agreement or other agreement, including any senior debt securities that may be offered; (2) indebtedness of the Company for money borrowed or represented by purchase money obligations, as defined below; (3) the Company’s obligations as lessee under leases of property whether made as part of a sale and leaseback transaction to which it is a party or otherwise; (4) reimbursement and other obligations relating to letters of credit, bankers’ acceptances and similar obligations and direct credit substitutes; (5) all obligations of the Company in respect of interest rate swap, cap or other agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity contracts and other similar arrangements; (6) all of the Company’s obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business; (7) any other obligation of the Company to its general creditors; (8) all obligations of the type referred to in clauses (1) through (7) of other persons for the payment of which the Company is liable contingently or otherwise to pay or advance money as obligor, guarantor, endorser or otherwise; (9) all obligations of the types referred to in clauses (1) through (8) of other persons secured by a lien on any property or asset of the Company; and (10) deferrals, renewals or extensions of any of the indebtedness or obligations described above; *provided, however*, that “Senior Indebtedness” does not include: (a) the subordinated notes of the Company issued in June 2015 and October 2017, and in each case any subordinated notes issued in exchange therefor or upon transfer thereof, in each case that are outstanding as of the date hereof or that are issued in exchange for or upon transfer of such subordinated notes after the date hereof, (b) the subordinated debt securities, including, without limitation, any subordinated debentures or junior subordinated debentures, of the Company underlying trust preferred securities issued by subsidiary trusts of the Company that are outstanding as of the date hereof or that are issued after the date hereof by a subsidiary trust of the Company; (c) any indebtedness, obligation or liability that is subordinated to indebtedness, obligations or liabilities of the Company to substantially the same extent as or to a greater extent than the Subordinated Notes are subordinated, including, without limitation, the Company’s 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029; and (d) any Subordinated Notes issued under this Indenture and, unless expressly provided in the terms thereof, any indebtedness of the Company to its Subsidiaries.

As used above, the term “purchase money obligations” means indebtedness, obligations evidenced by a note, debenture, bond or other instrument, whether or not secured by a lien or other security interest, issued to evidence the obligation to pay or a guarantee of the payment of, and any deferred obligation for the payment of, the purchase price of property but excluding indebtedness or obligations for which recourse is limited to the property purchased, issued or assumed as all or a part of the consideration for the acquisition of property or services, whether by purchase, merger, consolidation or otherwise, but does not include any trade accounts payable as set forth in clause (6) above.

“Significant Subsidiary” means any Subsidiary of the Company that is a “significant subsidiary” as defined in Rule 1-02 of Regulation S-X promulgated by the Commission (as such rule is in effect on the date of this Indenture).

“SOFR” means the daily Secured Overnight Financing Rate provided by the FRBNY, as the administrator of the benchmark (or a successor administrator), on the FRBNY’s Website.

“Special Record Date” for the payment of any Defaulted Interest on any Subordinated Note means a date fixed in accordance with Section 2.10.

“Stated Maturity” means September 30, 2034.

“Subordinated Note” or “Subordinated Notes” means the Initial Notes and the Exchange Notes and, more particularly, any Subordinated Note authenticated and delivered under this Indenture, including those Subordinated Notes issued or authenticated upon transfer, replacement or exchange.

“Subordinated Note Register” is defined in Section 2.06.

“Subordination Provisions” means the provisions contained in Article XI or any provisions with respect to subordination contained in the Subordinated Notes.

“Subsidiary” means a corporation, a partnership, business or statutory trust or a limited liability company, a majority of the outstanding voting equity securities or a majority of the voting membership or partnership interests, as the case may be, of which is owned or controlled, directly or indirectly, by the Company or by one or more other Subsidiaries of the Company. For the purposes of this definition, “voting equity securities” means securities having voting power for the election of directors, managers, managing partners or trustees, as the case may be, whether at all times or only so long as no senior class of stock has voting power by reason of any contingency.

“Tax Event” means the receipt by the Company of a legal opinion from counsel experienced in such matters to the effect that, as a result of a change in law on or after the date hereof, there is more than an insubstantial risk that interest paid by the Company on the Subordinated Notes is not, or, within 90 days of the date of such legal opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

“Term SOFR” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Administrator” means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or a successor administrator).

“Three-Month Term SOFR” means the greater of: (i) the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions; and (ii) zero percent (0.00%).

“Three-Month Term SOFR Conventions” means any determination, decision or election by the Calculation Agent with respect to any technical, administrative or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of “Floating Interest Period”, timing and frequency of determining Three-Month Term SOFR with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent decides may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).

“Tier 2 Capital” means Tier 2 capital for purposes of capital adequacy regulations of the Federal Reserve Board, as then in effect and applicable to the Company.

“Tier 2 Capital Event” means the receipt by the Company of a legal opinion from counsel experienced in such matters to the effect that, as a result of any change, event, occurrence, circumstance or effect occurring on or after the date hereof, the Subordinated Notes do not constitute, or within 90 days of the date of such legal opinion will not constitute, Tier 2 Capital (or its then equivalent if the Company were subject to such capital requirement).

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended.

“Trustee” means UMB Bank National Association, as trustee, until a successor replaces it in accordance with the provisions of this Indenture and thereafter means the successor serving hereunder.

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“United States” means the United States of America (including the states thereof and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

“Unrestricted Definitive Subordinated Note” means a Definitive Subordinated Note that does not bear, and is not required to bear, the Private Placement Legend.

“Unrestricted Global Subordinated Note” means a Global Subordinated Note that does not bear, and is not required to bear, the Private Placement Legend.

#### Section 1.02 Compliance Certificates and Opinions.

Except as otherwise expressly provided in or under this Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company will furnish to the Trustee an Officers’ Certificate stating that, in the opinion of the signers, all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents or any of them is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Each certificate or opinion with respect to which compliance with a condition provided for in this Indenture (other than an Officers' Certificate provided under Section 9.08) must comply with the provisions of Section 314(e) of the Trust Indenture Act and must include:

- (1) a statement that the person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such condition has been satisfied; and
- (4) a statement as to whether or not, in the opinion of such person, such condition has been satisfied.

Section 1.03 Form of Documents Delivered to Trustee.

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, but without investigation, should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based is 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 stating that the information with respect to such factual matters is in the possession of the Company unless such counsel knows, or in the exercise of reasonable care, but without investigation, should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture or any Subordinated Note, they may, but need not, be consolidated and form one instrument.

Section 1.04 Acts of Holders.

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or under this Indenture to be made, given 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. Except as herein otherwise expressly provided, such action will become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (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, or of the holding by any Person of a Subordinated Note, will be sufficient for any purpose of this Indenture and (subject to Section 5.01) conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section.

(2) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine, and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(3) The ownership, principal amount and serial numbers of Subordinated Notes held by any Person, and the date of the commencement and the date of the termination of holding the same, will be proved by the Subordinated Note Register.

(4) The Company may, in the circumstances permitted by the Trust Indenture Act, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act authorized or permitted to be given or taken by Holders. Unless otherwise specified, if not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, any such record date will be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation. If a record date is fixed, the Holders on such record date, and only such Persons, will be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action will be valid or effective if made, given or taken more than 90 days after such record date.

(5) Any effective request, demand, authorization, direction, notice, consent, waiver or other Act by the Holder of any Subordinated Note will bind every future Holder of the same Subordinated Note and the Holder of every Subordinated Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee, any Registrar, any Paying Agent or the Company in reliance thereon, whether or not notation of such Act is made upon such Subordinated Note.



(6) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so in accordance with such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount in accordance with this paragraph will have the same effect as if given or taken by separate Holders of each such different part.

(7) Without limiting the generality of this Section 1.04, a Holder, including a Depositary that is a Holder of a Global Subordinated Note, may make, give or take, by a proxy or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or under this Indenture or the Subordinated Notes to be made, given or taken by Holders, and a Depositary that is a Holder of a Global Subordinated Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Subordinated Note through such Depositary's Applicable Procedures. The Company may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Subordinated Note entitled under the Applicable Procedures of such Depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, will be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action will be valid or effective if made, given or taken more than 90 days after such record date.

Promptly upon any record date being set in accordance with this Section 1.04, the Company, at its own expense, will cause notice of the record date, the proposed action by Holders and the expiration date to be given to the Trustee in writing and the Holders in the manner set forth in Section 1.05.

Section 1.05 Required Notices or Demands.

Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in Person or delivered by registered or certified mail (return receipt requested), facsimile or overnight air courier guaranteeing next day delivery, to the other's address:

If to the Company;

Midland States Bancorp, Inc.  
1201 Network Centre Drive  
Effingham, Illinois 62401  
Attention: Jeffrey G. Ludwig  
Chief Executive Officer  
Facsimile: (217) 342-9462

If to the Trustee:

UMB Bank National Association  
5555 San Felipe, Suite 870  
Houston, Texas 77056  
Attention: Mauri J. Cowen  
Facsimile No.: 214-389-5949

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if delivered by mail; on the first Business Day after being sent, if sent by facsimile and the sender receives confirmation of successful transmission; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice required or permitted to be given to a Holder under the provisions of this Indenture will be deemed to be properly delivered by being deposited postage prepaid in a post office letter box in the United States addressed to such Holder at the address of such Holder as shown on the Subordinated Note Register. Any report in accordance with Section 313 of the Trust Indenture Act will be transmitted in compliance with subsection (c) therein. If the Company delivers a notice or communication to Holders, the Company will deliver a copy to the Trustee at the same time.

In any case where notice to Holders of Subordinated Notes is delivered by mail, neither the failure to deliver such notice, nor any defect in any notice so delivered, to any particular Holder of a Subordinated Note will affect the sufficiency of such notice with respect to other Holders of Subordinated Notes. Any notice that is delivered in the manner herein provided will be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it will be impracticable to give such notice by mail, then such notification as will be made with the approval of the Trustee will constitute a sufficient notification for every purpose hereunder.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver will be the equivalent of such notice. Waivers of notice by Holders of Subordinated Notes will be filed with the Trustee, but such filing will not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Notwithstanding any other provision herein, where this Indenture provides for notice to any Holder of a Global Subordinated Note, or of an interest therein, such notice will be sufficiently given if given to the Depository for such Global Subordinated Note (or its designee) according to the Applicable Procedures of such Depository prescribed for giving such notice.

Section 1.06      Incorporation by Reference of Trust Indenture Act; Conflicts.

Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. The Trust Indenture Act term “obligor” used in this Indenture means the Company and any successor obligor upon the Subordinated Notes.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by Commission rule under the Trust Indenture Act have the meanings so assigned to them as of the date of this Indenture. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture that is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act, such required provision will control. If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Section 318(c) of the Trust Indenture Act, the duties imposed by Section 318(c) of the Trust Indenture Act will control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the provisions of the Trust Indenture Act will be deemed to apply to this Indenture as so modified or will be excluded, as the case may be.

Section 1.07            Effect of Headings and Table of Contents.

The Article and Section headings in this Indenture and the Table of Contents are for convenience only and will not affect the construction of this Indenture.

Section 1.08            Successors and Assigns.

All the covenants, stipulations, promises and agreements in this Indenture by or on behalf of the Company or the Trustee will bind its respective successors and permitted assigns, whether so expressed or not. The Company may assign its rights under this Indenture, but may not assign its obligations under this Indenture, other than in connection with a transaction permitted by Article VII hereof, or as consented to by the Holder of each Outstanding Subordinated Note.

Section 1.09            Severability.

In case any provision in this Indenture or any Subordinated Note will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not, to the fullest extent permitted by law, in any way be affected or impaired thereby.

Section 1.10            Benefits of Indenture.

Nothing in this Indenture or any Subordinated Note, express or implied, will give to any Person, other than the parties hereto, any Registrar, any Paying Agent and their respective successors hereunder and the Holders of Subordinated Notes, and the holders of Senior Indebtedness, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.11            Governing Law.

This Indenture and the Subordinated Notes will be deemed to be a contract made under the laws of the State of New York and will be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any laws or principles of conflict of laws that would apply the laws of a different jurisdiction.

Section 1.12      Legal Holidays.

Unless otherwise specified in or under this Indenture or any Subordinated Notes, in any case where any Interest Payment Date, Stated Maturity or Maturity of, or any other day on which a payment is due with respect to, any Subordinated Note will be a day that is not a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or any Subordinated Note other than a provision in any Subordinated Note or in the Board Resolution, Officers' Certificate or supplemental indenture establishing the terms of any Subordinated Note that specifically states that such provision will apply in lieu hereof) payment need not be made at such Place of Payment on such date, but such payment may be made on the next succeeding day that is a Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, at the Stated Maturity or Maturity or on any such other payment date, as the case may be, and no interest will accrue on the amount payable on such date or at such time for the period from and after such Interest Payment Date, Stated Maturity, Maturity or other payment date, as the case may be, to the next succeeding Business Day,

Section 1.13      Counterparts; Electronic Transmission.

This Indenture may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon will, for all purposes, be deemed originals.

Section 1.14      Immunity of Certain Persons.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Subordinated Note, or because of any indebtedness evidenced thereby, will be had against any past, present or future shareholder, employee, officer or director, as such, of the Company or Trustee or of any predecessor or successor, either directly or through the Company or Trustee or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Subordinated Notes by the Holders and as part of the consideration for the issue of the Subordinated Notes.

Section 1.15      Waiver of Jury Trial.

EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SUBORDINATED NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 1.16      Force Majeure.

In no event will the 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 Trustee will use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 1.17 No Sinking Fund.

The Subordinated Notes are not entitled to the benefit of any sinking fund.

Section 1.18 Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “including” means including without limitation;
- (6) “will” will be interpreted to express a command;
- (7) provisions apply to successive events and transactions;
- (8) references to sections of, or rules under, the Securities Act will be deemed to include substitute, replacement or successor sections or rules adopted by the Commission from time to time;
- (9) unless the context otherwise requires, any reference to an “Article,” “Section” or “clause” refers to an Article, Section or clause, as the case may be, of this Indenture; and
- (10) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision.

**ARTICLE II**  
**THE SUBORDINATED NOTES**

Section 2.01 Forms Generally.

The Subordinated Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A-1 and Exhibit A-2, as applicable, which are a part of this Indenture. The Subordinated Notes may have notations, legends or endorsements required by law, stock exchange rule or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). The Company will provide any such notations, legends or endorsements to the Trustee in writing. Each Subordinated Note will be dated the date of its authentication. The terms and provisions contained in the Subordinated Notes will constitute, and are hereby expressly made a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Subordinated Note irreconcilably conflicts with the express provisions of this Indenture, the provisions of this Indenture will govern and be controlling.

Section 2.02      Definitive Subordinated Notes.

The Initial Notes will be issued initially in the form of one or more Definitive Subordinated Notes, unless, before the issuance of such Exchange Notes, the Company has determined that the Initial Notes may be represented by Global Subordinated Notes and has so notified the Trustee, in which event the Initial Notes will be issued in the form of one or more Global Subordinated Notes. The Exchange Notes will also be issued initially in the form of one or more Definitive Subordinated Notes, unless, before the issuance of such Exchange Notes, the Company has determined that the Subordinated Notes may be represented by Global Subordinated Notes and has so notified the Trustee, in which event the Exchange Notes will be issued in the form of one or more Global Subordinated Notes. Except as provided in Section 2.07, Holders of Definitive Subordinated Notes will not be entitled to transfer Definitive Subordinated Notes in exchange for beneficial interests in Global Subordinated Notes, and owners of beneficial interests in Global Subordinated Notes will not be entitled to receive physical delivery of Definitive Subordinated Notes.

Section 2.03      Global Subordinated Notes.

Each Global Subordinated Note issued under this Indenture will be deposited with the Trustee at its Corporate Trust Office, as custodian for the Depository, and registered in the name of the Depository or the nominee thereof, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of any Global Subordinated Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository as hereinafter provided. Any adjustment of the aggregate principal amount of a Global Subordinated Note to reflect the amount of any increase or decrease in the amount of outstanding Subordinated Notes represented thereby will be made by the Trustee in accordance with written instructions given by the Holder thereof as required by Section 2.07 hereof and will be made on the records of the Trustee and the Depository.

Section 2.04      Restricted Subordinated Notes.

Each Restricted Definitive Subordinated Note and Restricted Global Subordinated Note will bear a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER; (B) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).”

The Private Placement Legend set forth above will be removed and a new Subordinated Note of like tenor and principal amount without such Private Placement Legend will be executed by the Company, and upon written request of the Company (together with an Officers' Certificate and an Opinion of Counsel) given at least three Business Days prior to the proposed authentication date, the Trustee will authenticate and deliver such new Subordinated Note to the respective Holder, if legal counsel to the Holder or owner of beneficial interests requesting the removal of such Private Placement Legend deliver to the Trustee, any Registrar and Paying Agent (if a different Person than the Trustee) and the Company an opinion of counsel in compliance with this Indenture and additionally opining that the restrictive legend can be removed in connection with the transfer in accordance with the Securities Act.

Section 2.05            Execution and Authentication.

Subordinated Notes will be executed on behalf of the Company by any Authorized Officer and may (but need not) have the Company's corporate seal or a facsimile thereof reproduced thereon. The signature of an Authorized Officer on the Subordinated Notes may be manual or facsimile. Subordinated Notes bearing the manual or facsimile signatures of individuals who were at the time of execution Authorized Officers of the Company will, to the fullest extent permitted by law, bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Subordinated Notes or did not hold such offices at the date of such Subordinated Notes.

The Trustee or an Authenticating Agent will authenticate and deliver the Initial Notes for original issue in an initial aggregate principal amount of up to \$27,250,000 upon one or more Company Orders and an Opinion of Counsel. In addition, the Trustee or an Authenticating Agent will upon receipt of a Company Order, Opinion of Counsel and Officers' Certificate authenticate and deliver any Exchange Notes for an initial aggregate principal amount not to exceed \$27,250,000 specified in such Company Order for Exchange Notes issued hereunder. The aggregate principal amount of the Outstanding Subordinated Notes to be issued hereunder may be increased at any time hereafter and the series may be reopened for issuances of additional Subordinated Notes upon Company Order without the consent of any Holder. The Subordinated Notes issued on the date hereof and any such additional Subordinated Notes that may be issued hereafter shall be part of the same series of Subordinated Notes for all purposes under the Indenture. Unless the context otherwise requires, the initial Subordinated Notes and the Exchange Notes shall constitute one series for all purposes under the Indenture, including with respect to any amendment, waiver, acceleration or other Act of the Holders or upon redemption of the Subordinated Notes. The Subordinated Notes will be issued only in registered form without coupons and in minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof.

The Trustee will not be required to authenticate any Subordinated Notes if the issue of such Subordinated Notes under this Indenture will affect the Trustee's own rights, duties or immunities under the Subordinated Notes and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

No Subordinated Note will be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Subordinated Note a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee or by the Authenticating Agent by the manual signature of one of its authorized signatories. Such certificate upon any Subordinated Note will be conclusive evidence, and the only evidence, that such Subordinated Note has been duly authenticated and delivered hereunder.

Section 2.06            Registrar and Paying Agent.

The Company will maintain an office or agency where Subordinated Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Subordinated Notes may be presented for payment ("Paying Agent"). The Registrar will keep a register of the Subordinated Notes ("Subordinated Note Register") and of their transfer and exchange. The registered Holder of a Subordinated Note will be treated as the owner of the Subordinated Note for all purposes. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without prior notice to any Holder; provided that no such removal or replacement will be effective until a successor Paying Agent or Registrar will have been appointed by the Company and will have accepted such appointment. The Company will notify the Trustee in writing of the name and address of any Registrar or Paying Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee will act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints the Trustee to act as the Paying Agent and Registrar for the Subordinated Notes and, in the event that any Subordinated Notes are issued in global form, to initially act as custodian with respect to the Global Subordinated Notes. In the event that the Trustee will not be or will cease to be Registrar with respect to the Subordinated Notes, it will have the right to examine the Subordinated Note Register at all reasonable times. There will be only one Subordinated Note Register.

Section 2.07            Registration of Transfer and Exchange.

(1)            Except as otherwise provided in or under this Indenture, upon surrender for registration of transfer of any Subordinated Note, the Company will execute, and the Trustee will, upon receipt of a Company Order, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Subordinated Notes denominated as authorized in or under this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.



Except as otherwise provided in or under this Indenture, at the option of the Holder, Subordinated Notes may be exchanged for other Subordinated Notes containing identical terms and provisions, in any authorized denominations (minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof), and of a like aggregate principal amount, upon surrender of the Subordinated Notes to be exchanged at any office or agency for such purpose. Whenever any Subordinated Notes are so surrendered for exchange, the Company will execute, and the Trustee will authenticate and deliver, subject to the terms hereof, the Subordinated Notes that the Holder making the exchange is entitled to receive.

All Subordinated Notes issued upon any registration of transfer or exchange of Subordinated Notes will be the valid obligations of the Company evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Subordinated Notes surrendered upon such registration of transfer or exchange.

Every Subordinated Note presented or surrendered for registration of transfer or for exchange or redemption will (if so required by the Company or the Registrar for such Subordinated Note) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar for such Subordinated Note duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge will be made for any registration of transfer or exchange of Subordinated Notes, or any redemption or repayment of Subordinated Notes, or any conversion or exchange of Subordinated Notes for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Subordinated Notes from the Holder requesting such transfer or exchange.

Except as otherwise provided in or under this Indenture, the Company will not be required (i) to issue, register the transfer of or exchange any Subordinated Notes during a period beginning at the opening of business 15 days before the day of the selection for redemption of Subordinated Notes under Section 10.03 and ending at the close of business on the day of such selection, or (ii) to register the transfer of or exchange any Subordinated Note, or portion thereof, so selected for redemption, except in the case of any Subordinated Note to be redeemed in part, the portion thereof not to be redeemed.

Any Registrar (if not the Trustee) appointed in accordance with Section 2.06 hereof will provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Subordinated Notes upon transfer or exchange of Subordinated Notes. No Registrar will be required to make registrations of transfer or exchange of Subordinated Notes during any periods designated in the Subordinated Notes or in this Indenture as periods during which such registration of transfers and exchanges need not be made.

The Trustee and the Registrar will have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Subordinated Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Subordinated Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture.

Neither the Trustee nor any Paying Agent will have any responsibility for any actions taken or not taken by the Depositary.

(2) When Definitive Subordinated Notes are presented by a Holder to the Registrar with a request to register the transfer of such Definitive Subordinated Notes or to exchange such Definitive Subordinated Notes for an equal principal amount of Definitive Subordinated Notes of other authorized denominations, the Registrar will register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided, however*, that the Definitive Subordinated Notes surrendered for transfer or exchange will be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(3) A Global Subordinated Note may not be transferred except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Subordinated Notes will be exchanged by the Company for Definitive Subordinated Notes if: (i) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Subordinated Note or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor depositary is not appointed by the Company within 90 days, (ii) the Company determines that the Subordinated Notes are no longer to be represented by Global Subordinated Notes and so notifies the Trustee in writing, or (iii) an Event of Default has occurred and is continuing with respect to the Subordinated Notes and the Depositary or its participant(s) has requested the issuance of Definitive Subordinated Notes.

Any Global Subordinated Note exchanged in accordance with clause (i) or (ii) above will be so exchanged in whole and not in part, and any Global Subordinated Note exchanged in accordance with clause (iii) above may be exchanged in whole or from time to time in part as directed by the Depositary.

Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Definitive Subordinated Notes will be issued in fully registered form, without interest coupons, will have an aggregate Principal Amount equal to that of the Global Subordinated Note or portion thereof to be so exchanged, will be registered in such names and be in such authorized denominations as the Depositary will instruct the Trustee in writing and will bear such legends as provided herein. Global Subordinated Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.09 hereof. Every Subordinated Note authenticated and delivered in exchange for, or in lieu of, a Global Subordinated Note or any portion thereof, in accordance with this Section 2.07 or Section 2.09 hereof, will be authenticated and delivered in the form of, and will be, a Global Subordinated Note, except as otherwise provided herein. A Global Subordinated Note may not be exchanged for another Subordinated Note other than as provided in this Section 2.07(3); however, beneficial interests in a Global Subordinated Note may be transferred and exchanged as provided in Section 2.07(4) hereof.

Any Global Subordinated Note to be exchanged in whole will be surrendered by the Depositary to the Trustee. With regard to any Global Subordinated Note to be exchanged in part, either such Global Subordinated Note will be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Subordinated Note, the principal amount thereof will be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee will authenticate and deliver the Subordinated Note issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.

(4) The transfer and exchange of beneficial interests in the Global Subordinated Notes will be effected through the Depositary in accordance with the Applicable Procedures and this [Section 2.07](#).

(5) A Definitive Subordinated Note may not be exchanged for a beneficial interest in a Global Subordinated Note unless the Company determines that the Subordinated Notes may be represented by Global Subordinated Notes and so notifies the Trustee. After the Company has determined that the Subordinated Notes may be represented by Global Subordinated Notes and so notifies the Trustee in writing, then upon receipt by the Trustee of a Definitive Subordinated Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee, together with written instructions from such Holder directing the Trustee to make, or to direct the Registrar to make, an adjustment on its books and records with respect to such Global Subordinated Note to reflect an increase in the aggregate principal amount of the Subordinated Notes represented by the Global Subordinated Note, such instructions to contain information regarding the Depositary account to be credited with such increase, the Trustee will cancel such Definitive Subordinated Note and cause, or direct the Registrar to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Registrar, the aggregate principal amount of Subordinated Notes represented by the Global Subordinated Note to be increased by the aggregate principal amount of the Definitive Subordinated Note to be exchanged, and will credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Subordinated Note equal to the principal amount of the Definitive Subordinated Note so cancelled. If no Global Subordinated Notes are then outstanding, the Company will issue and the Trustee will authenticate, upon Company Order, a new Global Subordinated Note in the appropriate principal amount.

(6) At such time as all beneficial interests in a particular Global Subordinated Note have been exchanged for Definitive Subordinated Notes or a particular Global Subordinated Note has been repurchased or canceled in whole and not in part, each such Global Subordinated Note will be returned to or retained and canceled by the Trustee in accordance with [Section 2.12](#) hereof. At any time prior to such cancellation, if any beneficial interest in a Global Subordinated Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Subordinated Note or for Definitive Subordinated Notes, the principal amount of Subordinated Notes represented by such Global Subordinated Note will be reduced accordingly by adjustments made on the records of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Subordinated Note, such other Global Subordinated Note will be increased accordingly by adjustments made on the records of the Trustee to reflect such increase.

(7) No Restricted Subordinated Note will be transferred or exchanged except in compliance with the Private Placement Legend or as provided in accordance with Section 2.08. In addition to the provisions for transfer and exchange set forth in this Section 2.07, the Trustee, any Registrar and Paying Agent (if a different Person than the Trustee) and the Company may, prior to effecting any requested transfer or exchange of any Restricted Subordinated Notes, other than an exchange in accordance with Section 2.08, require that legal counsel to the Holder or owner of beneficial interests requesting such transfer or exchange deliver to the Trustee, any Registrar and Paying Agent (if a different Person than the Trustee) and the Company, an Opinion of Counsel in compliance with this Indenture and additionally opining that the transfer or exchange is in compliance with the requirements of the Private Placement Legend and that the Subordinated Note issued to the transferee or in exchange for the Restricted Subordinated Note may be issued free of the Private Placement Legend. Any untransferred or unexchanged balance of a Restricted Subordinated Note will be reissued to the Holder with the Private Placement Legend, unless the Private Placement Legend may be omitted in accordance with Section 2.04, as evidenced by the Opinion of Counsel.

Section 2.08      Exchange Offer.

Upon the occurrence of an Exchange Offer in accordance with the Registration Rights Agreement, the Company will issue and, upon receipt of a Company Order in accordance with Section 2.05 hereof, the Trustee will authenticate (i) Unrestricted Definitive Subordinated Notes in aggregate principal amounts equal to the principal amounts of the Restricted Definitive Subordinated Notes tendered in such Exchange Offer for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the applicable Exchange Notes and (z) they are not Affiliates of the Company, and accepted for exchange in such Exchange Offer or, if permitted by the Company, (ii) one or more Unrestricted Global Subordinated Notes in an aggregate principal amount equal to the aggregate principal amount of the beneficial interests in the Restricted Global Subordinated Notes tendered in such Exchange Offer for acceptance by Persons that certify in the applicable Letters of Transmittal that (x) they are not Participating Broker-Dealers, (y) they are not participating in a distribution of the applicable Exchange Notes and (z) they are not Affiliates of the Company, and accepted for exchange in such Exchange Offer. Concurrently with the issuance of such Unrestricted Global Subordinated Notes upon exchange of Restricted Global Subordinated Notes, the Trustee will cause the aggregate principal amount of the applicable Restricted Global Subordinated Notes to be reduced accordingly, and the Company will execute and the Trustee will authenticate and deliver to the Persons designated by the Holders of Restricted Definitive Subordinated Notes so accepted Unrestricted Definitive Subordinated Notes in the applicable principal amount. Any Subordinated Notes that remain outstanding after the consummation of such Exchange Offer, and Exchange Notes issued in connection with such Exchange Offer, will be treated as a single class of securities under this Indenture.

Section 2.09 Mutilated, Destroyed, Lost and Stolen Subordinated Notes.

If any mutilated Subordinated Note is surrendered to the Trustee, subject to the provisions of this Section 2.09, the Company will execute and the Trustee will authenticate and deliver in exchange therefor a new Subordinated Note containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding.

If there be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Subordinated Note, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Subordinated Note has been acquired by a bona fide purchaser, the Company will execute and, upon the Company's written instruction the Trustee will authenticate and deliver, in exchange for or in lieu of any such destroyed, lost or stolen Subordinated Note, a new Subordinated Note containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding.

Notwithstanding the foregoing provisions of this Section 2.09, in case the outstanding principal balance of any mutilated, destroyed, lost or stolen Subordinated Note has become or is about to become due and payable, or is about to be redeemed by the Company pursuant to Article X hereof, the Company in its discretion may, instead of issuing a new Subordinated Note, pay or redeem such Subordinated Note, as the case may be.

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

Every new Subordinated Note issued in accordance with this Section in lieu of any destroyed, lost or stolen Subordinated Note will constitute a separate obligation of the Company, whether or not the destroyed, lost or stolen Subordinated Note will be at any time enforceable by anyone, and will be entitled to all the benefits of this Indenture equally and proportionately with any and all other Subordinated Notes duly issued hereunder.

The provisions of this Section, as amended or supplemented in accordance with this Indenture with respect to particular Subordinated Notes or generally, will (to the extent lawful) be exclusive and will preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Subordinated Notes.

Section 2.10 Payment of Interest; Rights to Interest Preserved.

Any interest on any Subordinated Note that will be payable, and punctually paid or duly provided for, on any Interest Payment Date will be paid to the Person in whose name such Subordinated Note is registered on the Regular Record Date for such Interest Payment Date.

Any interest on any Subordinated Note that will be payable, but will not be punctually paid or duly provided for, on any Interest Payment Date for such Subordinated Note (herein called "Defaulted Interest") will cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Person in whose name such Subordinated Note will be registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which will be fixed in the following manner:

The Company will notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Subordinated Note and the date of the proposed payment, and at the same time the Company will deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or will make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this clause provided. Thereupon, the Company will fix or cause to be fixed a Special Record Date for the payment of such Defaulted Interest, which will be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company), will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be delivered to the Holder of such Subordinated Note at the Holder's address as it appears in the Subordinated Note Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been delivered as aforesaid, such Defaulted Interest will be paid to the Person in whose name such Subordinated Note will be registered at the close of business on such Special Record Date and will no longer be payable under the following clause (2).

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Subordinated Note may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment under this Clause, such payment will be deemed practicable by the Trustee.

Unless otherwise provided in or under this Indenture or the Subordinated Notes, at the option of the Company, interest on Subordinated Notes that bear interest may be paid by mailing a check to the address of the Person entitled thereto as such address will appear in the Subordinated Note Register or by transfer to an account maintained by the payee with a bank located in the United States.

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

Section 2.11 Persons Deemed Owners.

Prior to due presentment of a Subordinated Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Subordinated Note is registered in the Subordinated Note Register as the owner of such Subordinated Note for the purpose of receiving payment of principal of, and (subject to Section 2.07 and Section 2.10) interest on, such Subordinated Note and for all other purposes whatsoever, whether or not any payment with respect to such Subordinated Note will be overdue, and neither the Company, the Trustee or any agent of the Company or the Trustee will be affected by notice to the contrary.

No holder of any beneficial interest in any Global Subordinated Note held on its behalf by a Depository will have any rights under this Indenture with respect to such Global Subordinated Note, and such Depository may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Subordinated Note for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Subordinated Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, nothing herein will prevent the Company, the Trustee, any Paying Agent or the Registrar from giving effect to any written certification, proxy or other authorization furnished by the applicable Depository, as a Holder, with respect to a Global Subordinated Note or impair, as between such Depository and the owners of beneficial interests in such Global Subordinated Note, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as the Holder of such Global Subordinated Note.

Section 2.12 Cancellation.

All Subordinated Notes surrendered for payment, redemption, registration of transfer or exchange will, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Subordinated Note, as well as Subordinated Notes surrendered directly to the Trustee for any such purpose, will be cancelled promptly by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Subordinated Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Subordinated Notes so delivered will be cancelled promptly by the Trustee. No Subordinated Notes will be authenticated in lieu of or in exchange for any Subordinated Notes cancelled as provided in this Section, except as expressly permitted by or under this Indenture. All cancelled Subordinated Notes held by the Trustee will be disposed of in accordance with its procedure for the disposition of cancelled Subordinated Notes, and the Trustee upon the written request of the Company will deliver to the Company a certificate of such disposition, unless by a Company Order the Company shall direct that cancelled Subordinated Notes shall be returned to the Company.

Section 2.13 Computation of Interest.

From and including the original issue date of the Subordinated Notes, or from the most recent date to which interest has been paid or duly provided for, to but excluding September 30, 2029, the rate at which the Subordinated Notes shall bear interest shall be 5.50% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable semiannually in arrears on each Fixed Interest Payment Date, beginning on March 30, 2020. From and including September 30, 2029, to but excluding the Stated Maturity or at any Redemption Date, the rate at which the Subordinated Notes shall bear interest shall be a floating rate per annum, reset quarterly, equal to the Floating Interest Rate determined by the Calculation Agent on the Floating Interest Determination Date for the applicable Floating Interest Period plus 404.5 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on each Floating Interest Payment Date. Any payment of principal of or interest on the Subordinated Notes that would otherwise become due and payable on a day which is not a Business Day will become due and payable on the next succeeding Business Day, with the same force and effect as if made on the date for payment of such principal or interest, and no interest will accrue in respect of such payment for the period after such day.

Section 2.14 CUSIP Numbers.

The Company may issue the Subordinated Notes with one or more “CUSIP” numbers (if then generally in use). The Company will promptly notify the Trustee in writing of any change in the CUSIP numbers. The Trustee may use “CUSIP” numbers in notices (including but not limited to notices of redemption or exchange) 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 Subordinated Notes or as contained in any notice (including any notice of redemption or exchange) and that reliance may be placed only on the other identification numbers printed on the Subordinated Notes, and any such notice will not be affected by any defect in or omission of such numbers.

**ARTICLE III**  
**SATISFACTION AND DISCHARGE OF INDENTURE**

Section 3.01 Satisfaction and Discharge.

This Indenture will cease to be of further effect, and the Trustee, on receipt of a Company Order, at the expense of the Company, will execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(1) either:

(a) all Subordinated Notes theretofore authenticated and delivered (other than (i) Subordinated Notes that have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.09 and (ii) Subordinated Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 9.03) have been delivered to the Trustee for cancellation; or

(b) all Subordinated Notes that have not been delivered to the Trustee for cancellation (i) have become due and payable, or (ii) will become due and payable at their Stated Maturity within one year, or (iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose, an amount sufficient to pay and discharge the entire indebtedness on such Subordinated Notes not theretofore delivered to the Trustee for cancellation, including the principal of, and interest on, such Subordinated Notes, to the date of such deposit (in the case of Subordinated Notes which have become due and payable) or to the Maturity thereof, as the case may be;



(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Outstanding Subordinated Notes; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture with respect to the Subordinated Notes, the obligations of the Company to the Trustee under Section 5.07 and, if money will have been deposited with the Trustee in accordance with Section 3.01(1)(b), the obligations of the Company and the Trustee with respect to the Subordinated Notes under Section 3.03 and Section 9.03 will survive.

Section 3.02 Defeasance and Covenant Defeasance.

(1) The Company may at its option and at any time, elect to have Section 3.02(2) or Section 3.02(3) be applied to such Outstanding Subordinated Notes upon compliance with the conditions set forth below in this Section 3.02. Legal Defeasance and Covenant Defeasance may be effected only with respect to all, and not less than all, of the Outstanding Subordinated Notes.

(2) Upon the Company's exercise of the above option applicable to this Section 3.02(2), the Company will be deemed to have been discharged from its obligations with respect to such Outstanding Subordinated Notes on the date the conditions set forth in clause (4) of this Section 3.02 are satisfied ("Legal Defeasance"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Subordinated Notes, which will thereafter be deemed to be "Outstanding" only for the purposes of Section 3.02(5) and the other Sections of this Indenture referred to in clauses (i) through (iv) of this paragraph, and to have satisfied all of its other obligations under such Subordinated Notes and this Indenture insofar as such Subordinated Notes are concerned (and the Trustee, at the expense of the Company, will execute proper instruments acknowledging the same), except for the following which will survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Subordinated Notes to receive, solely from the trust fund described in Section 3.02(4)(a) and as more fully set forth in this Section 3.02 and Section 3.03, payments in respect of the principal of and interest, if any, on, such Subordinated Notes when such payments are due, (ii) the obligations of the Company and the Trustee with respect to such Subordinated Notes under Section 2.07, Section 2.09, Section 9.02 and Section 9.03, (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (iv) this Section 3.02 and Section 3.03. The Company may exercise its option under this Section 3.02(2) notwithstanding the prior exercise of its option under Section 3.02(3) with respect to such Subordinated Notes.

(3) Upon the Company's exercise of the above option applicable to this Section 3.02(3), the Company will be released from its obligations under Section 9.04 (except with respect to clause (i)), Section 9.05, Section 9.08 and Section 9.09 on and after the date the conditions set forth in Section 3.02(4) are satisfied ("Covenant Defeasance"), and such Subordinated Notes will thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with any such covenant, but will continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means that with respect to such Outstanding Subordinated Notes, the Company may omit to comply with, and will have no liability in respect of, any term, condition or limitation set forth in any such Section or any such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply will not constitute a default, but, except as specified above, the remainder of this Indenture and such Subordinated Notes will be unaffected thereby.

(4) The following will be the conditions to application of Section 3.02(2) or Section 3.02(3) to any Outstanding Subordinated Notes:

(a) The Company will irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 5.08 who will agree to comply with the provisions of this Section 3.02 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders, (i) an amount in Dollars, (ii) Government Obligations that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of and interest, if any, on such Subordinated Notes, money or (iii) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which will be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of and interest, if any, on, such Outstanding Subordinated Notes on the Stated Maturity of such principal or installment of principal or interest or the applicable Redemption Date, as the case may be.

(b) Such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Company or any Subsidiary is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Subordinated Notes will have occurred and be continuing on the date of such deposit, and, solely in the case of Legal Defeasance under Section 3.02(2), no Event of Default, or event which with notice or lapse of time or both would become an Event of Default, under Section 4.01 will have occurred and be continuing at any time during the period ending on and including the 91<sup>st</sup> day after the date of such deposit (it being understood that this condition to Legal Defeasance under Section 3.02(2) will not be deemed satisfied until the expiration of such period).

(d) In the case of Legal Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date of this Indenture there has been a change in applicable federal income tax law, in either case to the effect that, and based thereon such opinion of independent counsel will confirm that, the Holders of such Outstanding Subordinated Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred.

(e) In the case of Covenant Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Subordinated Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred.

(f) The Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the Legal Defeasance or Covenant Defeasance, as the case may be, under this Indenture have been satisfied.

(g) If the moneys or Government Obligations or combination thereof, as the case may be, deposited under Section 3.02(4)(a) above are sufficient to pay the principal of, and interest, if any, on, such Subordinated Notes provided such Subordinated Notes are redeemed on a particular Redemption Date, the Company will have given the Trustee irrevocable instructions to redeem such Subordinated Notes on such date and to provide notice of such redemption to Holders as provided in or under this Indenture.

(h) The Trustee will have received such other documents, assurances and Opinions of Counsel as the Trustee will have reasonably required in its discretion.

(5) Subject to the provisions of the last paragraph of Section 9.03, all money and Government Obligations deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 3.02(5), the "Trustee") in accordance with Section 3.02(4)(a) in respect of any Outstanding Subordinated Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Subordinated Notes and this Indenture, to the payment, either directly or through any Paying Agent (other than the Company or any Subsidiary or Affiliate of the Company acting as Paying Agent) as the Trustee may determine in its discretion, to the Holders of all sums due and to become due thereon in respect of principal and interest but such money and Government Obligations need not be segregated from other funds, except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited in accordance with this Section 3.02 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Subordinated Notes.

Section 3.03      Application of Trust Money.

Subject to the provisions of the last paragraph of Section 9.03, all money and Government Obligations deposited with the Trustee in accordance with Section 3.01 or Section 3.02 will be held in trust and applied by the Trustee, in accordance with the provisions of such Subordinated Notes subject to discharge under Section 3.01 or Legal Defeasance or Covenant Defeasance under Section 3.02, and this Indenture, to the payment, either directly or through any Paying Agent (including the Company, acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds, except to the extent required by law.

Section 3.04      Reinstatement.

If the Trustee (or other qualifying trustee appointed in accordance with Section 3.02(4)(a)) or any Paying Agent is unable to apply any moneys or Government Obligations deposited in accordance with Section 3.01(1) or Section 3.02(4)(a) to pay any principal of, or interest, if any, on, the Subordinated Notes by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Subordinated Notes will be revived and reinstated as though no such deposit had occurred, until such time as the Trustee (or other qualifying trustee) or Paying Agent is permitted to apply all such moneys and Government Obligations to pay the principal of, and interest, if any, on the Subordinated Notes as contemplated by Section 3.01 or Section 3.02 as the case may be; *provided, however*, that if the Company makes any payment of the principal of, or interest if any on, the Subordinated Notes following the reinstatement of its obligations as aforesaid, the Company will be subrogated to the rights of the Holders of such Subordinated Notes to receive such payment from the funds held by the Trustee (or other qualifying trustee) or Paying Agent.

Section 3.05      Effect on Subordination Provisions.

The provisions of Article XI are expressly made subject to the provisions for, and to the right of the Company to effect, the satisfaction and discharge of all of the Subordinated Notes as set forth in and in accordance with Section 3.01 and the provisions for, and to the right of the Company to effect, Legal Defeasance and Covenant Defeasance of all of the Subordinated Notes as set forth in and in accordance with Section 3.02. As a result, and anything herein to the contrary notwithstanding, if the Company complies with the provisions of Section 3.01 to effect the satisfaction and discharge of the Subordinated Notes or complies with the provisions of Section 3.02 to effect the Legal Defeasance or Covenant Defeasance, upon the effectiveness of such satisfaction and discharge in accordance with Section 3.01 or of Legal Defeasance or Covenant Defeasance in accordance with Section 3.02, in the case of satisfaction and discharge in accordance with Section 3.01, or, in the case of Legal Defeasance or Covenant Defeasance in accordance with Section 3.02, the Subordinated Notes as to which Legal Defeasance or Covenant Defeasance, as the case may be, will have become effective will thereupon cease to be so subordinated in right of payment to the Senior Indebtedness and will no longer be subject to the provisions of Article XI and, without limitation to the foregoing, all moneys and Government Obligations deposited with the Trustee (or other qualifying trustee) in trust in connection with such satisfaction and discharge, Legal Defeasance or Covenant Defeasance, as the case may be, and all proceeds therefrom may be applied to pay the principal of, and interest, if any, on, such Subordinated Notes as and when the same will become due and payable notwithstanding the provisions of Article XI without regard to whether any or all of the Senior Indebtedness then outstanding will have been paid or otherwise provided for.

**ARTICLE IV**  
**REMEDIES**

Section 4.01      Events of Default; Acceleration.

An “Event of Default” means any one of the following events (whatever the reason for such Event of Default and whether it will be voluntary or involuntary or be effected by operation of law or in accordance with any judgment, decree, or order of any court or any order, rule, or regulation of any administrative or governmental body):

(1) the entry of a decree or order for relief in respect of the Company by a court having jurisdiction in the premises in an involuntary case or proceeding under any applicable bankruptcy, insolvency, or reorganization law, now or hereafter in effect of the United States or any political subdivision thereof, and such decree or order will have continued unstayed and in effect for a period of 30 consecutive days;

(2) the commencement by the Company of a voluntary case under any applicable bankruptcy, insolvency or reorganization law, now or hereafter in effect of the United States or any political subdivision thereof, or the consent by the Company to the entry of a decree or order for relief in an involuntary case or proceeding under any such law;

(3) the failure of the Company to pay any installment of interest on any of the Subordinated Notes as and when the same will become due and payable, and the continuation of such failure for a period of 15 days;

(4) the failure of the Company to pay all or any part of the principal of any of the Subordinated Notes as and when the same will become due and payable under this Indenture;

(5) the failure of the Company to perform any other covenant or agreement on the part of the Company contained in the Subordinated Notes or in this Indenture, and the continuation of such failure for a period of 30 days after the date on which notice specifying such failure, stating that such notice is a “Notice of Default” hereunder and demanding that the Company remedy the same, will have been given, in the manner set forth in Section 1.05, to the Company by the Trustee, or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Subordinated Notes at the time Outstanding; or

(6) the default by the Company under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company having an aggregate principal amount outstanding of at least \$75,000,000, whether such indebtedness now exists or is created or incurred in the future, which default (i) constitutes a failure to pay any portion of the principal of such indebtedness when due and payable after the expiration of any applicable grace period or (ii) results in such indebtedness becoming due or being declared due and payable prior to the date on which it otherwise would have become due and payable without, in the case of clause (i), such indebtedness having been discharged or, in the case of clause (ii), without such indebtedness having been discharged or such acceleration having been rescinded or annulled.

Upon becoming aware of any Event of Default, the Company will promptly deliver to the Trustee a written statement specifying the Event of Default.

If an Event of Default described in Section 4.01(1) or Section 4.01(2) occurs, then the principal amount of all of the Outstanding Subordinated Notes, and accrued and unpaid interest, if any, on all Outstanding Subordinated Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder, and the Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. Notwithstanding the foregoing, because the Company will treat the Subordinated Notes as Tier 2 Capital, upon the occurrence of an Event of Default other than an Event of Default described in Section 4.01(1) or Section 4.01(2), neither the Trustee nor any Holder may accelerate the Maturity of the Subordinated Notes and make the principal of, and any accrued and unpaid interest on, the Subordinated Notes, immediately due and payable.

If any Event of Default occurs and is continuing, the Trustee may also pursue any other available remedy to collect the payment of principal of, and interest on, the Subordinated Notes or to enforce the performance of any provision of the Subordinated Notes or this Indenture.

Section 4.02            Failure to Make Payments.

If an Event of Default described in Section 4.01(3) or Section 4.01(4) occurs, the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Subordinated Notes, the whole amount then due and payable with respect to such Subordinated Notes, with interest upon the overdue principal, and, to the extent permitted by applicable law, upon any overdue installments of interest at the rate or respective rates, as the case may be, provided for or with respect to such Subordinated Notes or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Subordinated Notes, and, in addition thereto, such further amount of money as will be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due to the Trustee under Section 5.07.

If the Company fails to pay the money it is required to pay the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Subordinated Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

The Trustee may proceed to protect and enforce its rights and the rights of the Holders of Subordinated Notes by such appropriate judicial proceedings as the Trustee will deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other proper remedy.

Upon the occurrence of a failure by the Company to make any required payment of principal or interest on the Subordinated Notes, the Company may not declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock, make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to the Subordinated Notes, or make any payments under any guarantee that ranks equal with or junior to the Subordinated Notes, other than: (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of Company's capital stock or the exchange or conversion of one class or series of Company's capital stock for another class or series of Company's capital stock; (iv) the purchase of fractional interests in shares of Company's capital stock in accordance with the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of Company's common stock related to the issuance of common stock or rights under any benefit plans for Company's directors, officers or employees or any of Company's dividend reinvestment plans.

Section 4.03      Trustee May File Proofs of Claim.

In case of any judicial proceeding relative to the Company (or any other obligor upon the Subordinated Notes), its property or its creditors, the Trustee will be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee will be authorized to:

(1) file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Subordinated Notes, of the principal and interest owing and unpaid in respect of such Subordinated Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or retained professionals) and of the Holders of such Subordinated Notes allowed in such judicial proceeding, and

(2) 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 authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee will consent to the making of such payments directly to the Holders and to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and retained professionals, and any other amounts due hereunder.

No provision of this Indenture will be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment, or composition affecting the Subordinated Notes or the rights of any Holder or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; *provided, however*, the Trustee may vote on behalf of the Holders for the election of a trustee in bankruptcy or similar official and may be a member of a creditors, or other similar committee.

Section 4.04            Trustee May Enforce Claims Without Possession of Subordinated Notes.

All rights of action and claims under this Indenture or the Subordinated Notes may be prosecuted and enforced by the Trustee without the possession of any of the Subordinated Notes or the production of such Subordinated Notes in any related proceeding, and any such proceeding instituted by the Trustee will be brought in its own name as trustee of an express trust, and any recovery of judgment will, after provision for the payment of the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents, and retained professionals, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 4.05            Application of Money Collected.

Any money collected by the Trustee in accordance with this Article IV or, after an Event of Default, any money or other property distributable in respect of the Company's obligations under this Indenture will be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any interest, upon presentation of the Subordinated Notes and the notation on such Subordinated Notes of the payment if only partially paid and upon surrender of such Subordinated Notes if fully paid:

FIRST: To the payment of all amounts due the Trustee (including the payment of Trustee's agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee), acting in any capacity hereunder, (including any predecessor trustee) under Section 5.07;

SECOND: To the payment of amounts then due and unpaid to the holders of Senior Indebtedness, to the extent required under the Subordination Provisions established with respect to the Subordinated Notes;

THIRD: To the payment of the amounts then due and unpaid for principal of and any interest on the Subordinated Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Subordinated Notes for principal and interest, respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

Section 4.06            Limitation on Suits.

No Holder of any Subordinated Note will have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or any Subordinated Notes, or for the appointment of a receiver or trustee, or for any other remedy under this Indenture, unless:



- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Subordinated Notes;
- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Subordinated Notes will have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture;
- (3) such Holder or Holders have offered to the Trustee security and indemnity reasonably satisfactory to the Trustee to bond against the costs, expenses, and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request, and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Subordinated Notes;

it being understood and intended that no one or more of such Holders will have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb, or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner provided in this Indenture and for the equal and ratable benefit of all of such Holders.

Section 4.07            Unconditional Right of Holders to Payments.

Notwithstanding any other provision in this Indenture, the Holder of any Subordinated Note will have the right, which is absolute and unconditional, to receive payment of the principal of and (subject to Section 2.07 and Section 2.10) any interest on such Subordinated Note on the respective Stated Maturity or Maturities expressed in such Subordinated Note (or, in the case of redemption, on the Redemption Date), and to institute suit for the enforcement of any such payment and such rights will not be impaired without the consent of such Holder.

Section 4.08            Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders will be restored severally and respectively to their former positions under this Indenture, and thereafter all rights and remedies of the Trustee and the Holders will continue as though no such proceeding had been instituted.

Section 4.09            Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Subordinated Notes in the last paragraph of Section 2.09, no right or remedy conferred in this Indenture upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by law, be cumulative and in addition to every other right and remedy given under this Indenture or now or in the future existing at law or in equity or otherwise. The assertion or employment of any right or remedy under this Indenture, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 4.10      Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Subordinated Notes to exercise any right or remedy accruing upon any Event of Default will impair any such right or remedy or constitute a waiver of or acquiescence in any such Event of Default. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 4.11      Control by Holders.

The Holders of a majority in aggregate principal amount of the Outstanding Subordinated Notes will have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Subordinated Notes, *provided* that

- (1) such direction will not violate any rule of law or this Indenture or the Subordinated Notes,
- (2) the Trustee may take any other action deemed proper by the Trustee in its discretion which is not inconsistent with such direction, and
- (3) the Trustee will have the right to decline to follow any such direction if the Trustee in good faith will determine that the proceeding so directed would involve the Trustee in personal liability.

Section 4.12      Waiver of Past Defaults.

The Holders of not less than a majority in aggregate principal amount of the Outstanding Subordinated Notes may on behalf of the Holders of all the Subordinated Notes waive any past default under this Indenture and its consequences, except a default in the payment of the principal of, or interest on, any Subordinated Note, or in respect of a covenant or provision of this Indenture which under Article VIII cannot be modified or amended without the consent of the Holder of each Outstanding Subordinated Note.

Upon any such waiver, such default will cease to exist, and any Event of Default arising from such default will be deemed to have been cured, for every purpose of this Indenture; but no such waiver will extend to any subsequent or other default or impair any consequent right.

Section 4.13 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Subordinated Notes by his acceptance of such Subordinated Notes will be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered, or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 4.13 will not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Subordinated Notes, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest, if any, on any Subordinated Notes on or after the Stated Maturity or Maturities expressed in such Subordinated Notes (or, in the case of redemption, on or after the Redemption Date).

**ARTICLE V**  
**THE TRUSTEE**

Section 5.01 Duties of Trustee.

(1) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it hereby, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(2) Except during the continuance of an Event of Default:

(a) the duties of the Trustee will be determined solely by the express provisions hereof and the Trustee need perform only those duties that are specifically set forth herein and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee; and

(b) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements hereof; however, the Trustee will examine the certificates and opinions to determine whether or not they conform on their face to the requirements hereof (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(3) Whether or not therein expressly so provided, every provision hereof that in any way relates to the Trustee is subject to paragraphs (1) and (2) of this Section 5.01 and to Section 5.02.

(4) No provision hereof will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee security and indemnity reasonably satisfactory to it against any loss, liability or expense.

(5) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 5.02 Certain Rights of Trustee.

Subject to Section 315(a) through Section 315(d) of the Trust Indenture Act:

(1) the Trustee may conclusively rely and will be 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 or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein will be sufficiently evidenced by a Company Request or a Company Order (unless other evidence in respect thereof be herein specifically prescribed) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee will deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence will be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate or Opinion of Counsel, or both, which will comply with Section 1.02;

(4) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care;

(5) the Trustee will be under no obligation to exercise any of the rights or powers vested in it by or under this Indenture at the request or direction of any Holder(s) under this Indenture, unless such Holder(s) will have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(6) the Trustee will 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 Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee will determine to make such further inquiry or investigation, it will be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Company, personally or by agent, accountant or attorney, at the sole cost of the Company and will incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee will not be responsible for any misconduct or negligence on the part of any agent or professional appointed with due care by it hereunder;

(8) the Trustee will 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 Indenture;

(9) in no event will the 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 Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(10) the Trustee will not be required to take notice or be deemed to have notice of any default or Event of Default, except failure by the Company to pay or cause to be made any of the payments required to be made to the Trustee to pay principal of, and interest on, the Subordinated Notes, unless a Responsible Officer of the Trustee shall receive written notice of such default or Event of Default from the Company or from the Holders of at least 25% in aggregate principal amount of the then Outstanding Subordinated Notes delivered to the Corporate Trust Office of the Trustee and in the absence of such notice so delivered the Trustee may conclusively assume no default or Event of Default exists;

(11) the Trustee shall have no duty to monitor or confirm compliance by the Company with the terms of this Indenture or any Subordinated Note;

(12) the Trustee shall not be bound to make any investigation into (i) the performance of or compliance with any of the covenants or agreements set forth herein, (ii) the occurrence of any default, or the validity, enforceability, effectiveness or genuineness of this Indenture or any other agreement, instrument or document;

(13) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified for all costs (including those of its retained professionals), are extended to, and will be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed or appointed to act hereunder;

(14) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions under this Indenture;

(15) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(16) the Trustee shall not be liable or responsible for any calculation in connection with the transactions contemplated hereunder nor for any information used in connection with such calculation; and

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

Section 5.03 Notice of Defaults.

Within 90 days after a Responsible Officer of the Trustee is notified of the occurrence of any default hereunder with respect to the Subordinated Notes in accordance with Section 5.02(10), the Trustee will deliver to all Holders entitled to receive reports in accordance with Section 6.03(4), notice of such default hereunder known to the Trustee, unless such default will have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal of or interest, if any, on, any Subordinated Note, the Trustee will be protected in withholding such notice if and so long as the Board of Directors or a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the best interest of the Holders. For the purpose of this Section, the term “default” means any event that is, or after notice or lapse of time or both would become, an Event of Default with respect to Subordinated Notes.

Section 5.04 Not Responsible for Recitals or Issuance of Subordinated Notes.

The recitals contained herein and in the Subordinated Notes, except the Trustee’s certificate of authentication, will 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 Subordinated Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Subordinated Notes and perform its obligations hereunder. Neither the Trustee nor any Authenticating Agent will be accountable for the use or application by the Company of the Subordinated Notes or the proceeds thereof. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Subordinated Notes, it will not be accountable for the Company’s use of the proceeds from the Subordinated Notes or any money paid to the Company or upon the Company’s direction under any provision hereof, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Subordinated Notes or any other document in connection with the sale of the Subordinated Notes or under this Indenture other than its certificate of authentication.

Section 5.05 May Hold Subordinated Notes.

The Trustee, any Authenticating Agent, any Paying Agent, any Registrar or any other Person that may be an agent of the Trustee or the Company, in its individual or any other capacity, may become the owner or pledgee of Subordinated Notes and, subject to Section 310(b) and Section 311 of the Trust Indenture Act, may otherwise deal with the Company with the same rights that it would have if it were not Trustee, Authenticating Agent, Paying Agent, Registrar or such other Person.

The Trustee is subject to Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of Trust Indenture Act to the extent indicated.

Section 5.06            Money Held in Trust.

Except as provided in Section 3.02(5), Section 3.03 and Section 9.03, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and will be held uninvested. The Trustee will be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 5.07            Compensation and Reimbursement.

The Company agrees:

(1)            to pay to the Trustee from time to time compensation for all services rendered by the Trustee acting in any capacity hereunder (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2)            except as otherwise expressly provided herein, to reimburse the Trustee promptly upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of Trustee's agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee), except any such expense, disbursement or advance resulting from the Trustee's gross negligence or willful misconduct; and

(3)            to indemnify, defend, protect and hold each of the Trustee acting in any capacity or any predecessor Trustee and their agents, accountants, consultants, counsel and other experts employed by it in the exercise and performance of its powers and duties as Trustee harmless from and against any and all losses, liabilities, damages, costs or expenses suffered or incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense resulting from its gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction, and the fees and disbursements of the Trustee's agents, legal counsel, accountants and experts and including taxes (other than taxes based upon, measured by or determined by the income of the Trustee). The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. None of the Company need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

The obligations of the Company under this Section 5.07 will survive the satisfaction and discharge of this Indenture.

As security for the performance of the obligations of the Company under this Section, the Trustee will have a lien prior to the Subordinated Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, or interest on, Subordinated Notes. Such lien will survive the satisfaction and discharge hereof and the resignation or removal of the Trustee.

Any compensation or expense incurred by the Trustee after a default specified by Section 4.01 is intended to constitute an expense of administration under any then applicable bankruptcy or insolvency law. "Trustee" for purposes of this Section 5.07 will include any predecessor Trustee, but the negligence or bad faith of any Trustee will not affect the rights of any other Trustee under this Section 5.07. The provisions of this Section 5.07 will, to the extent permitted by law, survive any termination of this Indenture (including, without limitation, termination in accordance with any Bankruptcy Laws) and the resignation or removal of the Trustee.

Section 5.08            Corporate Trustee Required; Eligibility.

(1)            There will at all times be a Trustee hereunder that is a corporation, organized and doing business under the laws of the United States, any state thereof or the District of Columbia, eligible under Section 310(a)(1) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 and is subject to supervision or examination by federal or state authority. The Trustee will also satisfy the requirements of Section 310(a)(5) of the Trust Indenture Act. If at any time the Trustee will cease to be eligible in accordance with the provisions of this Section, it will resign immediately upon written request therefor by the Company or any Holder in the manner and with the effect hereinafter specified in this Article,

(2)            The Trustee will comply with Section 310(b) of the Trust Indenture Act; *provided, however*, that there will be excluded from the operation of Section 310(b)(1) of the Trust Indenture Act this Indenture or any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the Trust Indenture Act are met.

Section 5.09            Resignation and Removal; Appointment of Successor.

(1)            No resignation or removal of the Trustee and no appointment of a successor Trustee in accordance with this Article V will become effective until the acceptance of appointment by the successor Trustee in accordance with Section 5.10.

(2)            The Trustee may resign at any time with respect to the Subordinated Notes by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 5.10 will not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor Trustee.



(3) The Trustee may be removed at any time with respect to the Subordinated Notes by Act of the Holders of a majority in principal amount of the Outstanding Subordinated Notes, delivered to the Trustee and the Company.

If at any time:

(a) the Trustee will fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Subordinated Notes after written request therefor by the Company or any Holder who has been a bona fide Holder for at least six months,

(b) the Trustee will cease to be eligible under Section 5.08 and will fail to resign after written request therefor by the Company or any such Holder, or

(c) the Trustee will become incapable of acting or will be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property will be appointed or any public officer will take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company, by or in accordance with a Board Resolution, may remove the Trustee with respect to the Subordinated Notes, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Subordinated Notes and the appointment of a successor Trustee or Trustees.

(4) If the Trustee will resign, be removed or become incapable of acting, or if a vacancy will occur in the office of Trustee for any cause, with respect to the Subordinated Notes, the Company, by or in accordance with a Board Resolution, will promptly appoint a successor Trustee or Trustees with respect to the Subordinated Notes and will comply with the applicable requirements of Section 5.10. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Subordinated Notes shall have been appointed by Act of the Holders of a majority in principal amount of the Outstanding Subordinated Notes delivered to the Company and the retiring Trustee, the successor Trustee so appointed will, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 5.10, become the successor Trustee with respect to the Subordinated Notes and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Subordinated Notes will have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 5.10, any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Subordinated Notes.

(5) The Company will give notice of each resignation and each removal of the Trustee with respect to the Subordinated Notes and each appointment of a successor Trustee with respect to the Subordinated Notes by delivering written notice of such event by first-class mail, postage prepaid, to the Holders as their names and addresses appear in the Subordinated Note Register. Each notice will include the name of the successor Trustee with respect to the Subordinated Notes and the address of its Corporate Trust Office.

(1) Upon the appointment hereunder of any successor Trustee with respect to all Subordinated Notes, such successor Trustee so appointed will execute, acknowledge and deliver to the Company and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee will become effective and such successor Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges, will execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 9.03, will duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 5.07.

(2) Upon the appointment hereunder of any successor Trustee with respect to the Subordinated Notes, the Company, the retiring Trustee and such successor Trustee will execute and deliver an indenture supplemental hereto wherein each successor Trustee will accept such appointment and which (i) will contain such provisions as will be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Notes, (ii) if the retiring Trustee is not retiring with respect to all Subordinated Notes, will contain such provisions as will be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Notes will continue to be vested in the retiring Trustee, and (iii) will add to or change any of the provisions of this Indenture as will be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture will constitute such Trustees co-trustees of the same trust, that each such Trustee will be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee will be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee will become effective to the extent provided therein, such retiring Trustee will have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Subordinated Notes other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Subordinated Notes; but, on request of the Company or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Subordinated Notes and subject to Section 9.03 will duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Subordinated Notes, subject to its claim, if any, provided for in Section 5.07.

(3) Upon request of any Person appointed hereunder as a successor Trustee, the Company will execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (1) or (2) of this Section, as the case may be.

(4) No Person will accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person will be qualified and eligible under this Article. No resigning or removed Trustee shall have any liability or responsibility for the action or inaction of any successor Trustee.

Section 5.11            Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee will be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, will be the successor of the Trustee hereunder (provided that such corporation will otherwise be qualified and eligible under this Article), without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Subordinated Notes will have been authenticated but not delivered by the Trustee then in office, any such successor to such authenticating Trustee may adopt such authentication and deliver the Subordinated Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Subordinated Notes. In case any Subordinated Notes will not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Subordinated Notes in either its own name or that of its predecessor Trustee.

Section 5.12            Appointment of Authenticating Agent.

The Trustee may appoint one or more Authenticating Agents acceptable to the Company with respect to the Subordinated Notes which will be authorized to act on behalf of the Trustee to authenticate Subordinated Notes issued upon original issue, exchange, registration of transfer, partial redemption, partial repayment, or in accordance with Section 2.09, and Subordinated Notes so authenticated will be entitled to the benefits of this Indenture and will be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Subordinated Notes by the Trustee or the Trustee's certificate of authentication, such reference will be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent will be reasonably acceptable to the Company and, except as provided in or under this Indenture, will at all times be a corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least \$50,000,000 and is subject to supervision or examination by federal or state authority. If at any time an Authenticating Agent will cease to be eligible in accordance with the provisions of this Section, it will resign immediately upon written request therefor by the Company or any Holder in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent will be a party, or any corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, will be the successor of such Authenticating Agent hereunder, provided such corporation will be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent will cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent that will be acceptable to the Company and will deliver written notice of such appointment by first-class mail, postage prepaid, to all Holders with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Subordinated Note Register. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, will become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent will be appointed unless eligible under the provisions of this Section 5.12.

The Company agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section. If the Trustee makes such payments, it will be entitled to be reimbursed for such payments, subject to the provisions of Section 5.07.

The provisions of Section 2.11, Section 5.04 and Section 5.05 will be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed under this Section, the Subordinated Notes may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

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

UMB Bank National Association, as Trustee

By: \_\_\_\_\_  
Name:  
Title:  
Dated:

Section 5.13      Preferred Collection of Claims against Company.

If and when the Trustee will be or become a creditor of the Company (or any other obligor upon the Subordinated Notes), the Trustee will be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

**ARTICLE VI**  
**HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY**

Section 6.01      Holder Lists.

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Holders. If the Trustee is not the Registrar, the Company will cause to be furnished to the Trustee at least semiannually on January 1 and July 1 a listing of the Holders dated within 10 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

Section 6.02      Preservation of Information; Communications to Holders.

The Trustee will comply with the obligations imposed upon it in accordance with Section 312 of the Trust Indenture Act.

Every Holder of Subordinated Notes, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company, the Trustee, any Paying Agent or any Registrar will be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Subordinated Notes in accordance with Section 312(c) of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee will not be held accountable by reason of delivering any material in accordance with a request made under Section 312(b) of the Trust Indenture Act.

Section 6.03      Reports by Trustee.

(1)      Within 60 days after July 15 of each year commencing with the first July 15 following the date of this Indenture, if required by Section 313(a) of the Trust Indenture Act, the Trustee will transmit, in accordance with Section 313(c) of the Trust Indenture Act, a brief report dated as of such July 15 with respect to any of the events specified in said Section 313(a) and Section 313(b)(2) that may have occurred since the later of the immediately preceding July 15 and the date of this Indenture.

(2)      The Trustee will transmit the reports required by Section 313(a) of the Trust Indenture Act at the times specified therein.

(3)      The Trustee shall comply with Sections 313(b) and 313(c) of the Trust Indenture Act.

(4)      Reports under this Section will be transmitted in the manner and to the Persons required by Section 313(c) and Section 313(d) of the Trust Indenture Act.

Section 6.04      Reports by Company.

(1)      The Company, in accordance with Section 314(a) of the Trust Indenture Act, will:

(a) file with the Trustee, within 15 days after the Company files the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company may be required to file with the Commission in accordance with Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports in accordance with either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports that may be required in accordance with Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional certificates, information, documents and reports with respect to compliance by the Company, with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(c) transmit to the Holders within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company in accordance with paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(2) The Company intends to file the reports referred to in Section 6.04(1) with the Commission in electronic form in accordance with Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval system. Compliance with the foregoing, or any successor electronic system approved by the Commission, will constitute delivery by the Company of such reports to the Trustee and Holders in compliance with the provision of Section 6.04(1) and Trust Indenture Act Section 314(a). Notwithstanding anything to the contrary herein, the Trustee will have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee in accordance with this Section 6.04(2) will be solely for the purposes of compliance with Section 6.04(1) and with Trust Indenture Act Section 314(a). The Trustee's receipt of such reports, information and documents (whether or not filed in electronic form) is for informational purposes only and the Trustee's receipt of such will not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Trustee shall have no liability or responsibility for the filing, content or timeliness of any report hereunder aside from any report transmitted under Section 6.03 hereof.

**ARTICLE VII**  
**SUCCESSORS**

Section 7.01            Merger, Consolidation or Sale of All or Substantially All Assets.

The Company will not, in any transaction or series of related transactions, consolidate with or merge into any Person or sell, assign, transfer, lease or otherwise convey all or substantially all its properties and assets to any Person, unless:

(1) either the Company will be the continuing Person (in the case of a merger), or the successor Person (if other than the Company) formed by such consolidation or into which the Company is merged or which acquires by sale, assignment, transfer, lease or other conveyance all or substantially all the properties and assets of the Company will be a corporation organized and existing under the laws of the United States, any state thereof or the District of Columbia and will expressly assume, by an indenture (or indentures, if at such time there is more than one Trustee) supplemental hereto, executed by such successor corporation and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, and interest on, all the Outstanding Subordinated Notes and the due and punctual performance and observance of every obligation in this Indenture and the Outstanding Subordinated Notes on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Company or any Subsidiary as a result of that transaction as having been incurred by the Company or any Subsidiary at the time of the transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, will have occurred and be continuing; and

(3) either the Company or the successor Person will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease or other conveyance and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article VII and that all conditions precedent herein provided for relating to such transaction have been complied with.

For purposes of the foregoing, any sale, assignment, transfer, lease or other conveyance of all or any of the properties and assets of one or more Subsidiaries of the Company (other than to the Company or another Subsidiary), which, if such properties and assets were directly owned by the Company, would constitute all or substantially all of the Company's properties and assets, will be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

Section 7.02            Successor Person Substituted for Company.

Upon any consolidation by the Company with or merger of the Company into any other Person or any sale, assignment, transfer, lease or conveyance of all or substantially all of the properties and assets of the Company to any Person in accordance with Section 7.01, the successor Person formed by such consolidation or into which the Company is merged or to which such sale, assignment, transfer, lease or other conveyance is made will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and thereafter, except in the case of a lease, the predecessor Person will be released from all obligations and covenants under this Indenture and the Subordinated Notes.

**ARTICLE VIII**  
**SUPPLEMENTAL INDENTURES**

Section 8.01      Supplemental Indentures without Consent of Holders.

Without the consent of any Holders of Subordinated Notes, the Company (when authorized by or in accordance with a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company contained herein and in the Subordinated Notes;
- (2) to add to the covenants of the Company for the benefit of the Holders (as will be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Company with respect to the Subordinated Notes issued under this Indenture (as will be specified in such supplemental indenture or indentures);
- (3) to permit or facilitate the issuance of Subordinated Notes in uncertificated or global form, provided any such action will not adversely affect the interests of the Holders;
- (4) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Subordinated Notes and to add to or change any of the provisions of this Indenture as will be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, in accordance with the requirements of Section 5.10;
- (5) to cure any ambiguity or to correct or supplement any provision herein that may be defective or that may be inconsistent with any other provision herein;
- (6) to make any other provisions with respect to matters or questions arising under this Indenture that will not adversely affect the interests of the Holders of then Outstanding Subordinated Notes;
- (7) to add any additional Events of Default (as will be specified in such supplemental indenture);
- (8) to supplement any of the provisions of this Indenture to such extent as will be necessary to permit or facilitate the Legal Defeasance, Covenant Defeasance and/or satisfaction and discharge of the Subordinated Notes in accordance with Article III, provided that any such action will not adversely affect the interests of any Holder;



- (9) to provide for the issuance of Exchange Notes;
- (10) to conform any provision in this Indenture to the requirements of the Trust Indenture Act; or
- (11) to make any change that does not adversely affect the legal rights under this Indenture of any Holder.

Section 8.02 Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Subordinated Notes, by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by or in accordance with a Board Resolution), and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of the Subordinated Notes or of modifying in any manner the rights of the Holders under this Indenture; provided, that no such supplemental indenture, without the consent of the Holder of each Outstanding Subordinated Note affected thereby, will:

- (1) reduce the rate of or change the time for payment of interest, including Defaulted Interest, on any Subordinated Notes;
- (2) reduce the principal of or change the Stated Maturity of any Subordinated Notes, or change the date on which any Subordinated Notes may be subject to redemption or reduce the Redemption Price therefore;
- (3) make any Subordinated Note payable in money other than Dollars;
- (4) make any change in provisions of this Indenture protecting the right of each Holder to receive payment of principal of and interest on such Subordinated Note on or after the due date thereof or to bring suit to enforce such payment;
- (5) reduce the percentage in principal amount of the Outstanding Subordinated Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in Section 4.12 or Section 9.07 of this Indenture; or
- (6) modify any of the provisions of this Section 8.02, Section 4.12 or Section 9.07, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Subordinated Note affected thereby.

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

Section 8.03      Execution of Supplemental Indentures.

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article VIII or the modifications thereby of the trust created by this Indenture, the Trustee will be entitled to receive, and (subject to Section 5.01) will be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel to the effect that the execution of such supplemental indenture is authorized or permitted by this Indenture, that such supplemental indenture has been duly authorized, executed and delivered by, and is a valid, binding and enforceable obligation of, the Company, subject to customary exceptions, and that, to the extent applicable pursuant to Section 8.01, such supplemental indenture does not adversely affect the interests of the Holders. The Trustee may, but will not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 8.04      Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article VIII, this Indenture will be modified in accordance therewith, and such supplemental indenture will form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder.

Section 8.05      Reference in Subordinated Notes to Supplemental Indentures.

Subordinated Notes authenticated and delivered after the execution of any supplemental indenture in accordance with this Article VIII may, and will if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company will so determine, new Subordinated Notes so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Subordinated Notes.

Section 8.06      Effect on Senior Indebtedness.

No supplemental indenture will directly or indirectly modify or eliminate the Subordination Provisions or the definition of "Senior Indebtedness" applicable with respect to the Subordinated Notes in any manner that might terminate or impair the subordination of such Subordinated Notes to such Senior Indebtedness without the prior written consent of each of the holders of such Senior Indebtedness.

Section 8.07      Conformity with Trust Indenture Act.

Every supplemental indenture executed in accordance with this Article will conform to the requirements of the Trust Indenture Act as then in effect.

**ARTICLE IX**  
**COVENANTS**

Section 9.01            Payment of Principal and Interest.

The Company covenants and agrees for the benefit of the Holders that it will duly and punctually pay the principal of, and interest on, the Subordinated Notes, in accordance with the terms thereof and this Indenture. Principal and interest will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 11:00 a.m., Eastern time, on the Business Day immediately prior to any Interest Payment Date, an amount in immediately available funds provided by the Company that is designated for and sufficient to pay all principal and interest then due. The Company will pay all Additional Interest, if any, on the dates and in the amounts set forth in the Registration Rights Agreement.

If Additional Interest is payable by the Company in accordance with the Registration Rights Agreement, the Company will deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives such a certificate or instruction or direction from the Holders in accordance with the terms of this Indenture, the Trustee may assume without inquiry that no Additional Interest is payable. The foregoing will not prejudice the rights of the Holders with respect to their entitlement to Additional Interest as otherwise set forth in this Indenture or the Subordinated Notes and pursuing any action against the Company directly or otherwise directing the Trustee to take such action in accordance with the terms of this Indenture and the Subordinated Notes. If the Company has paid Additional Interest directly to persons entitled to it, the Company will deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 9.02            Maintenance of Office.

The Company will maintain an office or agency in The City of New York (which may be an office of the Trustee or an Affiliate of the Trustee or Registrar) where Subordinated Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Subordinated Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Subordinated Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in The City of New York. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee in each of The City of New York and in Houston, Texas as one such office or agency of the Company in accordance with Section 9.02; provided, however, that no service of legal process on the Company may be made at any office of the Trustee.

Section 9.03            Money for Subordinated Notes Payments to Be Held in Trust.

If the Company will at any time act as its own Paying Agent, it will, on or before each due date of the principal of, or interest on, any of the Subordinated Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in Dollars sufficient to pay the principal and interest, as the case may be, so becoming due until such sums will be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company will have one or more Paying Agents, it will, on or prior to each due date of the principal of, or interest on, any Subordinated Notes, deposit with any Paying Agent a sum in Dollars sufficient to pay the principal and interest, as the case may be, so becoming due, such sum to be held in trust for the benefit of the Persons entitled thereto, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent will agree with the Trustee, subject to the provisions of this Section that such Paying Agent will:

- (1) hold all sums held by it for the payment of the principal of, or interest on, the Subordinated Notes in trust for the benefit of the Persons entitled thereto until such sums will be paid to such Persons or otherwise disposed of as provided in or under this Indenture;
- (2) give the Trustee notice of any default by the Company in the making of any payment of principal, or interest on, the Subordinated Notes; and
- (3) at any time during the continuance of any such default, upon the written request of the Trustee, pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent will be released from all further liability with respect to such sums.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, or interest on, any Subordinated Note and remaining unclaimed for two years after such principal or interest will have become due and payable will be paid to the Company upon a Company Request, or (if then held by the Company) will be discharged from such trust; and the Holder of such Subordinated Note will thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease.

Section 9.04 Corporate Existence.

Subject to Article VII, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect (i) the corporate existence of the Company, (ii) the existence (corporate or otherwise) of each Significant Subsidiary and (iii) the rights (charter and statutory), licenses and franchises of the Company and each of its Significant Subsidiaries, including without limitation the Company's status as a bank holding company or financial holding company under the Bank Holding Company Act of 1956, as amended, and the Company's principal bank subsidiary's status as an "insured depository institution" under Section 3(c)(2) of the Federal Deposit Insurance Act, as amended; provided, however, that the Company will not be required to preserve the existence (corporate or other) of any of its Significant Subsidiaries or any such right, license or franchise of the Company or any of its Significant Subsidiaries if the Board of Directors of the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Significant Subsidiaries taken as a whole and that the loss thereof will not be disadvantageous in any material respect to the Holders. Subject to Article VII, the Company shall not take any action, omit to take any action or enter into any transaction that would have the effect of the Company owning less than one hundred percent (100%) of the capital stock of the Company's principal bank subsidiary.

Section 9.05 Maintenance of Properties.

The Company will, and will cause each Significant Subsidiary to, cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided, however*, that nothing in this Section will prevent the Company or any Significant Subsidiary from discontinuing the operation and maintenance of any of their respective properties if such discontinuance is, in the judgment of the Board of Directors of the Company or of any Significant Subsidiary, as the case may be desirable in the conduct of its business.

Section 9.06 Dividends.

The Company shall not declare or pay any dividend, or make any distribution on capital stock or other equity securities of any kind of the Company, in each case except: (i) in such amounts as permitted by applicable regulations and only upon receipt of any required regulatory approval; and (ii) for dividends payable solely in shares of common stock of the Company.

Section 9.07 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in Section 9.02 to Section 9.06, inclusive, with respect to the Subordinated Notes if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Subordinated Notes, by Act of such Holders, either will waive such compliance in such instance or generally will have waived compliance with such term, provision or condition, but no such waiver will extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver will become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition will remain in full force and effect.

Section 9.08 Company Statement as to Compliance.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate covering the preceding calendar year, stating whether or not, to the best of his or her knowledge, the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to notice requirements or periods of grace) and if the Company will be in default, specifying all such defaults and the nature and status thereof of which he or she may have knowledge.

Section 9.09 Tier 2 Capital.

If all or any portion of the Subordinated Notes ceases to be deemed to be Tier 2 Capital, other than due to the limitation imposed on the capital treatment of subordinated debt during the five (5) years immediately preceding the Maturity Date of the Subordinated Notes, the Company will immediately notify the Trustee and the Holders thereof, and thereafter the Company and the Holders will work together in good faith, subject to the terms of this Indenture, to execute and deliver all agreements as reasonably necessary in order to restructure the applicable portions of the obligations evidenced by the Subordinated Notes to qualify as Tier 2 Capital and the Company shall request, subject to the terms of this Indenture, that the Trustee execute and deliver all such agreements as may be reasonably necessary in order to effect any restructuring agreed to by the Company and the Holders; *provided, however*, that nothing contained in this Section 9.09 shall limit the Company's right to redeem the Subordinated Notes upon the occurrence of a Tier 2 Capital Event pursuant to Section 10.01(3) hereof.

**ARTICLE X**  
**REDEMPTION OF SECURITIES**

Section 10.01 Applicability of Article.

(1) Except as provided in this Section 10.01, the Subordinated Notes are not subject to redemption at the option of the Company. The Subordinated Notes are not subject to redemption at the option of the Holders.

(2) Subject to the receipt of the prior approval of the Board of Governors of the Federal Reserve System (the "Federal Reserve"), to the extent such approval is then required under the capital adequacy rules of the Federal Reserve, with corresponding written notice to the Trustee, the Company may, at its option, on any Interest Payment Date on or after September 30, 2029, redeem all or a portion of the Subordinated Notes.

(3) Subject to the receipt of the prior approval of the Federal Reserve, to the extent such approval is then required under the capital adequacy rules of the Federal Reserve, with corresponding written notice to the Trustee, the Company may, at its option, redeem all, but not a portion of the Outstanding Subordinated Notes at any time upon an Investment Company Event, a Tax Event or a Tier 2 Capital Event.

(4) The Redemption Price with respect to any redemption permitted under this Indenture will be equal to 100% of the principal amount of the Subordinated Notes to be redeemed, plus accrued but unpaid interest and Additional Interest, if any, thereon to, but excluding, the Redemption Date.

Section 10.02      Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Subordinated Notes will be evidenced by a Company Order. In case of any redemption of less than all of the Subordinated Notes, the Company will, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice will be satisfactory to the Trustee, but in any event not less than 45 days prior to the Redemption Date), notify the Trustee, of such Redemption Date and of the principal amount of Subordinated Notes to be redeemed.

In the case of any redemption of Subordinated Notes (i) prior to the expiration of any restriction on such redemption provided in the terms of such Subordinated Notes or elsewhere in this Indenture or (ii) in accordance with an election of the Company that is subject to a condition specified in the terms of such Subordinated Notes or elsewhere in this Indenture, the Company will furnish to the Trustee an Officers' Certificate evidencing compliance with such restriction or condition.

Section 10.03      Selection by Trustee of Subordinated Notes to be Redeemed.

If less than all of the Subordinated Notes are to be redeemed, the particular Subordinated Notes to be redeemed will be selected not more than 45 days prior to the Redemption Date by the Trustee from the Outstanding Subordinated Notes not previously called for redemption unless otherwise required by law or applicable depositary requirements, on a pro rata basis as to the Holders and which may provide for the selection for redemption of portions of the principal amount of Subordinated Notes; *provided, however*, that no such partial redemption will reduce the portion of the principal amount of a Subordinated Note not redeemed to less than the minimum denomination for a Subordinated Note established in or under this Indenture. In the event a pro rata redemption is not permitted under applicable law or applicable depositary requirements, the Subordinated Notes to be redeemed will be selected by lot or such method as the Trustee will deem fair and appropriate.

The Trustee will promptly notify the Company and the Registrar (if other than itself) in writing of the Subordinated Notes selected for redemption and, in the case of any Subordinated Notes selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinated Notes will relate, in the case of any Subordinated Notes redeemed or to be redeemed only in part, to the portion of the principal of such Subordinated Notes which has been or is to be redeemed.

Section 10.04 Notice of Redemption.

Notice of redemption will be given in the manner provided in Section 1.05, not less than 30 nor more than 60 days prior to the Redemption Date to the Holders of Subordinated Notes to be redeemed. Failure to give notice by delivering in the manner herein provided to the Holder of any Subordinated Notes designated for redemption as a whole or in part, or any defect in the notice to any such Holder, will not affect the validity of the proceedings for the redemption of any other Subordinated Notes or portions thereof.

Any notice that is delivered to the Holder of any Subordinated Notes in the manner herein provided will be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption will state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all Outstanding Subordinated Notes are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Subordinated Note or Subordinated Notes to be redeemed,
- (4) that, in case any Subordinated Note is to be redeemed in part only, on and after the Redemption Date, upon surrender of such Subordinated Note, the Holder of such Subordinated Note will receive, without charge, a new Subordinated Note or Subordinated Notes of authorized denominations for the principal amount thereof remaining unredeemed,
- (5) that, on the Redemption Date, the Redemption Price will become due and payable upon each such Subordinated Note or portion thereof to be redeemed, together (if applicable) with accrued and unpaid interest and Additional Interest, if any, thereon (subject, if applicable, to the provisos to the first paragraph of Section 10.06), and, if applicable, that interest thereon will cease to accrue on and after said date,
- (6) the place or places where such Subordinated Notes are to be surrendered for payment of the Redemption Price and any accrued interest pertaining thereto, and
- (7) the section hereunder providing for such redemption.

The notice of redemption shall include the CUSIP number reference numbers of such Subordinated Notes, if any (or any other numbers used by a Depository to identify such Subordinated Notes).

Notice of redemption of Subordinated Notes to be redeemed at the election of the Company will be given by the Company or, at the Company's request delivered at least 10 days before the date such notice is to be given (unless a shorter period will be acceptable to the Trustee) together with the form of notice to be delivered, by the Trustee in the name and at the expense of the Company.



Section 10.05      Deposit of Redemption Price.

On or prior to 11:00 a.m., Eastern time, on any Redemption Date, the Company will deposit, with respect to the Subordinated Notes called for redemption in accordance with Section 10.04, with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 9.03) an amount sufficient to pay the Redemption Price of, and (except if the Redemption Date will be an Interest Payment Date) any accrued interest on, all such Subordinated Notes or portions thereof which are to be redeemed on that date.

Section 10.06      Subordinated Notes Payable on Redemption Date.

Notice of redemption having been given as provided above, the Subordinated Notes so to be redeemed will, on the Redemption Date, become due and payable at the Redemption Price therein specified, together with accrued and unpaid interest and Additional Interest, if any, thereon and from and after such date (unless the Company will default in the payment of the Redemption Price and accrued interest, if any) such Subordinated Notes will cease to bear interest. Upon surrender of any such Subordinated Note for redemption in accordance with said notice, such Subordinated Note will be paid by the Company at the Redemption Price, together with any accrued and unpaid interest and Additional Interest, if any, thereon to but excluding the Redemption Date; *provided, however*, that installments of interest on Subordinated Notes whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Subordinated Notes registered as such on the Regular Record Dates therefor according to their terms and the provisions of Section 2.10.

If any Subordinated Note called for redemption will not be so paid upon surrender thereof for redemption, the principal, until paid, will bear interest from the Redemption Date at the rate prescribed therefor in the Subordinated Note or, if no rate is prescribed therefor in the Subordinated Note, at the rate of interest, if any, borne by such Subordinated Note.

Section 10.07      Subordinated Notes Redeemed in Part.

Any Subordinated Note which is to be redeemed only in part will be surrendered at any office or agency for such Subordinated Note (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company will execute and the Trustee will authenticate and deliver to the Holder of such Subordinated Note without service charge, a new Subordinated Note or Subordinated Notes, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Subordinated Note so surrendered. If a Global Subordinated Note is so surrendered, the Company will execute, and the Trustee will authenticate and deliver to the Depository for such Global Subordinated Note as will be specified in the Company Order with respect thereto to the Trustee, without service charge, a new Global Subordinated Note in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Subordinated Note so surrendered.

Upon surrender of a Subordinated Note that is redeemed in part, the Company will issue and the Trustee will authenticate for the Holder at the expense of the Company a new Subordinated Note equal in principal amount to the unredeemed portion of the Subordinated Notes Note surrendered representing the same indebtedness to the extent not redeemed. Notwithstanding anything in this Indenture to the contrary, only a Company Order and not an Opinion of Counsel or an Officers' Certificate of the Company is required for the Trustee to authenticate such new Subordinated Note.

**ARTICLE XI**  
**SUBORDINATION OF SECURITIES**

Section 11.01      Agreement to Subordinate.

The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of Subordinated Notes by the Holder's acceptance thereof, likewise covenants and agrees, that the payment of the principal of and interest on each and all of the Subordinated Notes is and will be expressly subordinated in right of payment to the prior payment in full of all Senior Indebtedness.

Section 11.02      Distribution of Assets.

(1)            Upon any distribution of assets of the Company upon any termination, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred upon the Senior Indebtedness and the holders thereof with respect to the Subordinated Notes and the Holders thereof by a lawful plan of reorganization under applicable bankruptcy law):

(a)            holders of all Senior Indebtedness will first be entitled to receive payment in full in accordance with the terms of such Senior Indebtedness of the principal thereof, premium, if any, and the interest due thereon (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) before the Holders of the Subordinated Notes are entitled to receive any payment upon the principal of or interest on indebtedness evidenced by the Subordinated Notes;

(b)            any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders would be entitled except for the provisions of this Article XI, including any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinated to the payment of the Subordinated Notes, will be paid by the liquidating trustee or agent or other Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, in accordance with the priorities then existing among holders of Senior Indebtedness for payment of the aggregate amounts remaining unpaid on account of the principal, premium, if any, and interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency or similar law now or hereafter in effect) on the Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness; it being understood that if the Holders fail to file a proper claim in the form required by any proceeding referred to in this Section 11.02(1)(b) prior to 30 days before the expiration of the time to file such claim or claims, then the holders of Senior Indebtedness are hereby authorized to file an appropriate claim or claims for and on behalf of the Holders, in the form required in any such proceeding; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, including any such payment or distribution that may be payable or deliverable by reason of the payment of any other indebtedness of the Company being subordinate to the payment of the Subordinated Notes will be received by the Trustee or the Holders before all Senior Indebtedness is paid in full, such payment or distribution will be paid over to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment of assets of the Company for all Senior Indebtedness remaining unpaid until all such Senior Indebtedness will have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness,

(2) Subject to the payment in full of all Senior Indebtedness, the Holders will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal of and interest on the Subordinated Notes will be paid in full and no such payments or distributions to holders of such Senior Indebtedness to which the Holders would be entitled except for the provisions hereof of cash, property or securities otherwise distributable to the holders of Senior Indebtedness will, as between the Company, its creditors, other than the holders of Senior Indebtedness, and the Holders, be deemed to be a payment by the Company to or on account of the Senior Indebtedness. It is understood that the provisions of this Article XI are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Notes, on the one hand, and the holders of Senior Indebtedness, on the other hand. Nothing contained in this Article XI or elsewhere in this Indenture or any supplemental indenture issued in accordance with Article VIII of this Indenture or in the Subordinated Notes is intended to or will impair, as between the Company, its creditors, other than the holders of Senior Indebtedness, and the Holders, the obligation of the Company, which is unconditional and absolute, to pay to the Holders the principal of and interest on the Subordinated Notes as and when the same will become due and payable in accordance with their terms or to affect the relative rights of the Holders and creditors of the Company, other than the holders of the Senior Indebtedness, nor, except as otherwise expressly provided in this Indenture and the Subordinated Notes with respect to the limitation on the rights of the Trustee and the Holders, to accelerate the maturity of the Subordinated Notes and pursue remedies upon such an acceleration, will anything herein or in the Subordinated Notes prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon any Event of Default under the Indenture occurring, subject to the rights, if any, under this Article XI of the holders of Senior Indebtedness, in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any payment or distribution of assets of the Company referred to in this Article XI, the Trustee and the Holders will be entitled to rely upon any order or decree of a court of competent jurisdiction in which such termination, winding up, liquidation or reorganization proceeding is pending or upon a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XI. In the absence of any such liquidating trustee, agent or other person, the Trustee will be entitled to rely upon a written notice by a Person representing itself to be a holder of Senior Indebtedness (or a trustee or representative on behalf of such holder) as evidence that such Person is a holder of Senior Indebtedness (or is such a trustee or representative). If the Trustee determines, in good faith, that further evidence is required with respect to the right of any Person, as a holder of Senior Indebtedness, to participate in any payment or distribution in accordance with this Article XI, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, as to the extent to which such Person is entitled to participation in such payment or distribution, and as to other facts pertinent to the rights of such Person under this Article XI, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Indebtedness will be read into this Indenture against the Trustee. The Trustee, however, will not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness by reason of the execution of this Indenture, or any other supplemental indenture entered into in accordance with Article VIII of this Indenture, and will not be liable to any such holders if it will in good faith mistakenly pay over or distribute to or on behalf of the Holders or the Company moneys or assets to which any holders of Senior Indebtedness will be entitled by virtue of this Article XI or otherwise.

Section 11.03      Default With Respect to Senior Indebtedness.

In the event and during the continuation of any default in the payment of principal of, or premium, if any, or interest on, any Senior Indebtedness, beyond any applicable grace period, or if any event of default with respect to any Senior Indebtedness will have occurred and be continuing, or would occur as a result of the payment referred to hereinafter, permitting the holders of such Senior Indebtedness (or a trustee on behalf of the holders thereof) to accelerate the maturity thereof, then, unless and until such default or event of default will have been cured or waived or will have ceased to exist, no payment or principal of or interest on the Subordinated Notes, or in respect of any retirement, purchase or other acquisition of any of the Subordinated Notes, will be made by the Company.

Section 11.04      No Impairment.

Nothing contained in this Indenture, any other supplemental indenture entered into in accordance with Article VIII of this Indenture, or in any of the Subordinated Notes will: (i) impair, as between the Company and the Holders, the obligations of the Company, to make, or prevent the Company from making, at any time except as provided in Section 11.02 and Section 11.03, payments of principal of, or interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect) on, the Subordinated Notes, as and when the same will become due and payable in accordance with the terms of the Subordinated Notes; (ii) affect the relative rights of the Holders and creditors of the Company other than the holders of the Senior Indebtedness; (iii) except as otherwise expressly provided in this Indenture and the Subordinated Notes with respect to the limitation on the rights of the Trustee and the Holders, to accelerate the maturity of the Subordinated Notes and pursue remedies upon such an acceleration, prevent the Holder of any Subordinated Notes or the Trustee from exercising all remedies otherwise permitted by applicable law upon default thereunder, subject to the rights, if any, under this Article XI of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of such remedy; or (iv) prevent the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to the payment of or on account of the principal of, or interest on, the Subordinated Notes or prevent the receipt by the Trustee or any Paying Agent of such moneys, if, prior to the third Business Day prior to such deposit, the Trustee or such Paying Agent did not have written notice of any event prohibiting the making of such deposit by the Company.

Section 11.05      Effectuation of Subordination Provisions.

Each Holder by his acceptance of any Notes authorizes and expressly directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the Subordination Provisions, and appoints the Trustee such Holder's attorney-in-fact for such purposes, including, in the event of any termination, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors by the Company, a marshalling of the assets and liabilities of the Company or otherwise) tending toward the liquidation of the property and assets of the Company, the filing of a claim for the unpaid balance of the Subordinated Notes in the form required in those proceedings.

Section 11.06      Notice to Trustee.

The Company will give prompt written notice to the Trustee of any fact known to the Company that would prohibit the Company from making any payment to or by the Trustee in respect of the Subordinated Notes in accordance with the provisions of this Article XI. The Trustee will not be charged with the knowledge of the existence of any default or event of default with respect to any Senior Indebtedness or of any other facts that would prohibit the making of any payment to or by the Trustee or any Paying Agent unless and until a Responsible Officer of the Trustee has received a written notice specifying such default, event of default or other facts signed by an Authorized Officer, or by a holder of Senior Indebtedness or a trustee or agent thereof; and prior to the receipt of any such written notice, the Trustee will, subject to Article V of this Indenture, be entitled to assume that no such facts exist; provided that, if the Trustee will not have received the notice provided for in this Section 11.06 at least two Business Days prior to the date upon which, by the terms of the Indenture, any monies will become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Subordinated Note), then, notwithstanding anything herein to the contrary, the Trustee will have full power and authority to receive any monies from the Company and to apply the same to the purpose for which they were received, and will not be affected by any notice to the contrary that may be received by it on or after such prior date except for an acceleration of the Subordinated Notes prior to such application. The foregoing will not apply if the Paying Agent is the Company. The Trustee will be entitled to rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of any Senior Indebtedness (or a trustee on behalf of, or agent of, such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee or agent on behalf of any such holder.

In the event that the Trustee determines in good faith that any evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution in accordance with this Article XI, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XI and, if such evidence is not furnished to the Trustee, the Trustee may defer any payment to such Person pending such evidence being furnished to the Trustee or a judicial determination that such Person has the right to receive such payment.

Section 11.07      Trustee Knowledge of Senior Indebtedness.

Notwithstanding the provisions of this Article XI or any other provisions of this Indenture or any other supplemental indenture issued in accordance with Article VIII of this Indenture, neither the Trustee nor any Paying Agent will be charged with knowledge of the existence of any Senior Indebtedness or of any event that would prohibit the making of any payment of moneys to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee or such Paying Agent has received written notice thereof from the Company or from the holder of any Senior Indebtedness or from the representative of any such holder.

Section 11.08      Senior Indebtedness to Trustee.

The Trustee will be entitled to all of the rights set forth in this Article XI in respect of any Senior Indebtedness at any time held by it in its individual capacity to the same extent as any other holder of such Senior Indebtedness, and nothing in this Indenture or any other supplemental indenture issued in accordance with Article VIII of this Indenture will be construed to deprive the Trustee of any of its rights as such holder.

Section 11.09      Subordination Not Applicable to Trustee Compensation.

Nothing contained in this Article XI will apply to the claims of, or payments to, the Trustee under Section 5.07 of this Indenture.

The Trustee hereby accepts the trusts in this Indenture upon the terms and conditions set forth herein.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly signed as of the date first written above.

**MIDLAND STATES BANCORP, INC.**

By: /s/ Jeffrey G. Ludwig

Name Jeffrey G. Ludwig

Title President and Chief Executive Officer

*[Signature page to Indenture]*

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**UMB BANK NATIONAL ASSOCIATION**

As Trustee

By: /s/ Mauri J. Cowen

Name Mauri J. Cowen

Title Sr. Vice President

*[Signature page to Indenture]*

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**Exhibit A-1**  
**Form of Definitive Subordinated Notes**

**MIDLAND STATES BANCORP, INC.**

**5.50% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE SEPTEMBER 30, 2034**

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER; (B) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).]

THE SECURITY AND THE OBLIGATIONS OF THE COMPANY AS EVIDENCED BY THIS SUBORDINATED NOTE (1) ARE NOT A DEPOSIT AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND AND (2) ARE SUBORDINATE IN THE RIGHT OF PAYMENT TO ALL SENIOR INDEBTEDNESS (AS DEFINED IN THE INDENTURE IDENTIFIED HEREIN).



**CERTAIN ERISA CONSIDERATIONS:**

THE HOLDER OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) (EACH A “PLAN”), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE “PLAN ASSETS” BY REASON OF ANY PLAN’S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING “PLAN ASSETS” OF ANY PLAN MAY ACQUIRE OR HOLD THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, ARE NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE AND HOLDING. ANY PURCHASER OR HOLDER OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER: (i) IT IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN TO WHICH TITLE I OF ERISA OR SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLANS, OR ANY OTHER PERSON OR ENTITY USING THE “PLAN ASSETS” OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE OR (ii) SUCH PURCHASE OR HOLDING WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH FULL EXEMPTIVE RELIEF IS NOT AVAILABLE UNDER APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

ANY FIDUCIARY OF ANY PLAN WHO IS CONSIDERING THE ACQUISITION OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN SHOULD CONSULT WITH HIS OR HER LEGAL COUNSEL PRIOR TO ACQUIRING THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN.

**MIDLAND STATES BANCORP, INC.****5.50% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE 2034**

**THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND.**

1. **Indenture; Holder.** This Subordinated Note is one of a duly authorized issue of notes of Midland States Bancorp, Inc., an Illinois corporation (the “Company”), designated as the “5.50% Fixed-to-Floating Rate Subordinated Notes due 2034” (the “Subordinated Notes”) in an aggregate principal amount of \$27,250,000 and initially issued on September 20, 2019. The Company has issued this Subordinated Note under that certain Indenture dated as of September 20, 2019, relating to the Subordinated Notes, as the same may be amended or supplemented from time to time (“Indenture”), between the Company and UMB Bank National Association, a national banking association, as Trustee (the “Trustee”). All capitalized terms not otherwise defined in this Subordinated Note will have the meanings assigned to them in the Indenture. The terms of this Subordinated Note include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). This Subordinated Note is subject to all such terms, and the Holder (as defined below) is referred to the Indenture and the Trust Indenture Act for a statement of such terms. To the extent any provision of this Subordinated Note irreconcilably conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

2. **Payment.** The Company, for value received, promises to pay to [●], the principal sum of [●] DOLLARS (U.S.) (\$[●]), plus accrued but unpaid interest on September 30, 2034 (“Stated Maturity”) and to pay interest thereon (i) from and including the original issue date of the Subordinated Notes, or from the most recent date to which interest has been paid or duly provided for, to but excluding September 30, 2029, at the rate of 5.50% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable semi-annually in arrears on March 30 and September 30 of each year (each, a “Fixed Interest Payment Date”), beginning March 30, 2020, and (ii) from and including September 30, 2029 to, but excluding the Stated Maturity or the early redemption date contemplated by Section 5 of this Subordinated Note (the “Floating Rate Period”), at the rate per annum, reset quarterly, equal to the Floating Interest Rate (as defined below) determined on the Floating Interest Determination Date (as defined below) of the applicable interest period plus 404.5 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on March 30, June 30, September 30 and December 30 (each quarterly period, a “Floating Interest Period”) of each year (each payment date, a “Floating Interest Payment Date”). Dollar amounts resulting from this calculation shall be rounded to the nearest cent, with one-half cent being rounded up. The term “Floating Interest Determination Date” means the date upon which the Floating Interest Rate is determined by the Calculation Agent pursuant to the Three-Month Term SOFR Conventions. The Company will pay all Additional Interest (as defined in the Indenture), if any, on the dates and in the amounts set forth in the Registration Rights Agreement (as defined in the Indenture).

- (a) An “Interest Payment Date” is either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable.
- (b) The “Floating Interest Rate” means:
  - (i) initially Three-Month Term SOFR (as defined below).
  - (ii) Notwithstanding the foregoing clause (i) of this Section 2(b):
    - (1) If the Calculation Agent determines prior to the relevant Floating Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date (each of such terms as defined below) have occurred with respect to Three-Month Term SOFR, then the Company shall promptly provide notice of such determination to the Holder and Section 2(c) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the Floating Interest Rate payable on the Subordinated Notes during a relevant Floating Interest Period.
    - (2) However, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, but for any reason the Benchmark Replacement has not been determined as of the relevant Floating Interest Determination Date, the Floating Interest Rate for the applicable Floating Interest Period will be equal to the Floating Interest Rate on the last Floating Interest Determination Date for the Subordinated Notes, as determined by the Calculation Agent.
  - (iii) If the then-current Benchmark is Three-Month Term SOFR and any of the foregoing provisions concerning the calculation of the interest rate and the payment of interest during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions (as defined below) determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply.
- (c) Effect of Benchmark Transition Event.
  - (i) If the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time (as defined below) in respect of any determination of the Benchmark (as defined below) on any date, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Subordinated Notes during the relevant Floating Interest Period in respect of such determination on such date and all determinations on all subsequent dates.

- (ii) In connection with the implementation of a Benchmark Replacement, the Company will have the right to make Benchmark Replacement Conforming Changes from time to time.
- (iii) Any determination, decision or election that may be made by the Calculation Agent pursuant to the benchmark transition provisions set forth herein, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action or any selection:
  - (1) will be conclusive and binding absent manifest error;
  - (2) if made by the Company, will be made in the Company's sole discretion; and
  - (3) notwithstanding anything to the contrary in this Subordinated Note or the Indenture, shall become effective without consent from the Holder or any other party.
- (iv) For the avoidance of doubt, after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, interest payable on this Subordinated Note for the Floating Rate Period will be an annual rate equal to the sum of the applicable Benchmark Replacement and the spread specified on the face hereof.
- (v) As used in this Subordinated Note:
  - 1. "Benchmark" means, initially, Three-Month Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement.
  - 2. "Benchmark Replacement" means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then "Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- a. Compounded SOFR;
  - b. the sum of: (i) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (ii) the Benchmark Replacement Adjustment;
  - c. the sum of: (i) the ISDA Fallback Rate and (ii) the Benchmark Replacement Adjustment;
  - d. the sum of: (i) the alternate rate of interest that has been selected by the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated floating rate notes at such time and (ii) the Benchmark Replacement Adjustment.
3. "Benchmark Replacement Adjustment" means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:
- a. the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
  - b. if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
  - c. the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.

4. “Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Floating Interest Period,” timing and frequency of determining rates with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors and other administrative matters) that the Company decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).
5. “Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:
  - a. in the case of clause (a) of the definition of “Benchmark Transition Event,” the relevant Reference Time in respect of any determination;
  - b. in the case of clause (b) or (c) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
  - c. in the case of clause (d) of the definition of “Benchmark Transition Event,” the date of such public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for purposes of such determination.

6. “Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:
  - a. if the Benchmark is Three-Month Term SOFR, (i) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (ii) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (iii) the Calculation Agent determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;

- b. a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
  - c. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
  - d. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.
7. "Calculation Agent" means such bank or other entity (which may be the Company or one of its Affiliates) as may be appointed by the Company, in writing, to act as Calculation Agent for the Subordinated Notes during the Floating Rate Period, and who has accepted such appointment in writing.
8. "Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Floating Interest Period) being established by the Company in accordance with:
- a. the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided that*:
  - b. if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or its designee giving due consideration to any industry-accepted market practice for U.S. dollar denominated floating rate notes at such time.

For the avoidance of doubt, the calculation of Compounded SOFR will exclude the Benchmark Replacement Adjustment.

9. "Corresponding Tenor" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.
10. "FRBNY" means the Federal Reserve Bank of New York.
11. "FRBNY's Website" means the website of the FRBNY at <http://www.newyorkfed.org> or any successor source.
12. "Interpolated Benchmark" with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.
13. "ISDA" means the International Swaps and Derivatives Association, Inc. or any successor thereto.
14. "ISDA Definitions" means the 2006 ISDA Definitions published by the ISDA or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.
15. "ISDA Fallback Adjustment" means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.
16. "ISDA Fallback Rate" means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.
17. "Reference Time" with respect to any determination of a Benchmark means (1) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (2) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.



18. "Relevant Governmental Body" means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.
19. "SOFR" means the daily Secured Overnight Financing Rate provided by the FRBNY, as the administrator of the benchmark (or a successor administrator), on the FRBNY's Website.
20. "Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.
21. "Term SOFR Administrator" means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or a successor administrator).
22. "Three-Month Term SOFR" means the greater of (i) the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions; and (ii) zero percent (0.00%).
23. "Three-Month Term SOFR Conventions" means any determination, decision or election by the Calculation Agent with respect to any technical, administrative or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of "Floating Interest Period", timing and frequency of determining Three-Month Term SOFR with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent decides may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).
24. "Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

(d) In the event that any Fixed Interest Payment Date during the Fixed Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and no additional dividends shall accrue as a result of that postponement. In the event that any Floating Interest Payment Date during the Floating Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and dividends shall accrue to but excluding the date dividends are paid. However, if the postponement would cause the day to fall in the next calendar month during the Floating Interest Period, the Floating Interest Payment Date shall instead be brought forward to the immediately preceding Business Day. The term “Business Day” means any day other than a Saturday or Sunday or any other day on which banking institutions in the State of Illinois or State of New York are generally authorized or required by law or executive order to be closed.

The Company will pay interest on this Subordinated Note to the Person who is the registered Holder at the close of business on the fifteenth calendar day prior to the applicable Interest Payment Date, except as provided in Section 2.10 of the Indenture with respect to Defaulted Interest. This Subordinated Note will be payable as to principal and interest at the office or agency of the Paying Agent, or, at the option of the Company, payment of interest may be made by check delivered to the Holder at its address set forth in the Subordinated Note Register or by wire transfer to an account appropriately designated by the Person entitled to payment; *provided*, that the Paying Agent will have received written notice of such account designation at least five Business Days prior to the date of such payment (subject to surrender of this Subordinated Note in the case of a payment of interest at Maturity).

3. Paying Agent and Registrar. The Trustee will act as the initial Paying Agent and Registrar through its offices presently located at [●]. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Subordination. The indebtedness of the Company evidenced by this Subordinated Note, including the principal thereof and interest thereon, is, to the extent and in the manner set forth in the Indenture, subordinate and junior in right of payment to obligations of the Company constituting the Senior Indebtedness (as defined in the Indenture) on the terms and subject to the terms and conditions as provided and set forth in Article XI of the Indenture and will rank *pari passu* in right of payment with all other Subordinated Notes. Holder, by the acceptance of this Subordinated Note, agrees to and will be bound by such provisions of the Indenture and authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided.

5. Redemption.

(a) The Company may, at its option, on any Interest Payment Date on or after September 30, 2029, redeem this Subordinated Note, in whole or in part, without premium or penalty, but in all cases in a principal amount with integral multiples of \$1,000. In addition, the Company may redeem all, but not a portion of the Subordinated Notes, at any time upon the occurrence of a Tier 2 Capital Event, Tax Event or an Investment Company Event. Any redemption of this Subordinated Note shall be subject to the prior approval of the Board of Governors of the Federal Reserve System (or its designee) or any successor agency, and any other bank regulatory agency, to the extent such approval shall then be required by law, regulation or policy. This Subordinated Note is not subject to redemption at the option of the Holder. The Redemption Price with respect to any redemption permitted under this Indenture will be equal to 100% of the principal amount of this Subordinated Note, or portion thereof, to be redeemed, plus accrued but unpaid interest and Additional Interest, if any, thereon to, but excluding, the Redemption Date.

(b) If less than the then outstanding principal amount of this Subordinated Note is redeemed, (i) a new note shall be issued representing the unredeemed portion without charge to the Holder thereof and (ii) such redemption shall be effected on a pro rata basis as to the Holder. For purposes of clarity, upon a partial redemption, a like percentage of the principal amount of every Subordinated Note held by every Holder shall be redeemed.

(c) Effectiveness of Redemption. If notice of redemption has been duly given and notwithstanding that any Subordinated Notes so called for redemption have not been surrendered for cancellation, on and after the Redemption Date interest shall cease to accrue on all Subordinated Notes so called for redemption, all Subordinated Notes so called for redemption shall no longer be deemed outstanding and all rights with respect to such Subordinated Notes shall forthwith on such Redemption Date cease and terminate (unless the Company shall default in the payment of the redemption price), except only the right of the Holder thereof to receive the amount payable on such redemption, without interest.

6. Events of Default; Acceleration. An “Event of Default” means any one of the events described in Section 4.01 of the Indenture. If an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture occurs, then the principal amount of all of the Outstanding Subordinated Notes, and accrued and unpaid interest, if any, on all Outstanding Subordinated Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or the Holder, and the Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. Notwithstanding the foregoing, because the Company will treat the Subordinated Notes as Tier 2 Capital, upon the occurrence of an Event of Default other than an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture, neither the Trustee nor the Holder may accelerate the Maturity of the Subordinated Notes and make the principal of, and any accrued and unpaid interest on, the Subordinated Notes, immediately due and payable. If any Event of Default occurs and is continuing, the Trustee may also pursue any other available remedy to collect the payment of principal of, and interest on, the Subordinated Notes then due and payable or to enforce the performance of any provision of the Subordinated Notes or the Indenture.

7. Failure to Make Payments. If the Company fails to make any payment of interest on this Subordinated Note when such interest becomes due and payable and such default continues for a period of 30 days, or if the Company fails to make any payment of the principal of this Subordinated Note when such principal becomes due and payable, the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holder, the whole amount then due and payable with respect to this Subordinated Note, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest at the rate or respective rates, as the case may be, provided for or with respect to this Subordinated Note or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by this Subordinated Note.

Upon an Event of Default, the Company may not declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock, make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to this Subordinated Note, or make any payments under any guarantee that ranks equal with or junior to this Subordinated Note, other than: (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of Company's capital stock or the exchange or conversion of one class or series of Company's capital stock for another class or series of Company's capital stock; (iv) the purchase of fractional interests in shares of Company's capital stock in accordance with the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of Company's common stock related to the issuance of common stock or rights under any benefit plans for Company's directors, officers or employees or any of Company's dividend reinvestment plans.

8. Denominations, Transfer, Exchange. The Subordinated Notes are issuable only in registered form without interest coupons in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. The transfer of this Subordinated Note may be registered and this Subordinated Note may be exchanged as provided in the Indenture. The Registrar may require the Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require the Holder to pay any taxes and fees required by law or permitted by the Indenture.

9. Charges and Transfer Taxes. No service charge will be made for any registration of transfer or exchange of this Subordinated Note, or any redemption or repayment of this Subordinated Note, or any conversion or exchange of this Subordinated Note for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of this Subordinated Note from the Holder requesting such transfer or exchange.

10. Persons Deemed Owners. The Company and the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Subordinated Note is registered as the owner hereof for all purposes, whether or not this Subordinated Note is overdue, and neither the Company, the Trustee nor any such agent will be affected by notice to the contrary.

11. Amendments; Waivers. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Subordinated Notes at any time by the Company and the Trustee with the consent of the holders of a majority in principal amount of the then Outstanding Subordinated Notes. The Indenture also contains provisions permitting the holders of specified percentages in principal amount of the then Outstanding Subordinated Notes, on behalf of the holders of all Subordinated Notes, to waive certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Subordinated Note will be conclusive and binding upon such Holder and upon all future holders of this Subordinated Note and of any Subordinated Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Subordinated Note.

12. No Impairment. No reference herein to the Indenture and no provision of this Subordinated Note or of the Indenture will alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (if any) and Additional Interest on this Subordinated Note at the times, place and rate as herein prescribed.

13. Sinking Fund; Convertibility. This Subordinated Note is not entitled to the benefit of any sinking fund. This Subordinated Note is not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any Subsidiary.

14. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Subordinated Note, or for any claim based thereon or otherwise in respect thereof, will be had against any past, present or future shareholder, employee, officer, or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Subordinated Note by the Holder and as part of the consideration for the issuance of this Subordinated Note.

15. Authentication. This Subordinated Note will not be valid until authenticated by the manual signature of the Trustee or an Authenticating Agent.

16. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act). Additional abbreviations may also be used though not in the above list.

17. Available Information. The Company will furnish to the Holder upon written request and without charge a copy of the Indenture. Requests by the Holder to the Company may be made to: Midland States Bancorp, Inc., 1201 Network Centre Drive, Effingham, Illinois 62401, Attention: Douglas J. Tucker, Corporate Counsel.

18. Governing Law. THIS SUBORDINATED NOTE WILL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY LAWS OR PRINCIPLES OF CONFLICT OF LAWS THAT WOULD APPLY THE LAWS OF A DIFFERENT JURISDICTION.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be duly executed.

**MIDLAND STATES BANCORP, INC.**

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

Name: Jeffrey G. Ludwig

Title: Chief Executive Officer and President

*[Signature page to Certificate of Authentication]*

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Subordinated Notes of Midland States Bancorp, Inc., referred to in the within-mentioned Indenture:

**UMB BANK NATIONAL ASSOCIATION,**  
a national banking association, as Trustee

By: \_\_\_\_\_  
Name:  
Title:  
Dated:

*[Signature page to Certificate of Authentication]*

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**ASSIGNMENT FORM**

To assign this Subordinated Note, fill in the form below: (I) or (we) assign and transfer this Subordinated Note to:

---

(Print or type assignee's name, address and zip code)

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(Insert assignee's social security or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Subordinated Note on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Your signature: \_\_\_\_\_  
(Sign exactly as your name appears on the face of this Subordinated Note)

Tax Identification No: \_\_\_\_\_

Signature Guarantee:

\_\_\_\_\_  
(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

The undersigned certifies that it [is / is not] an Affiliate of the Company and that, to its knowledge, the proposed transferee [is / is not] an Affiliate of the Company.

In connection with any transfer or exchange of this Subordinated Note occurring prior to the date that is one year after the later of the date of original issuance of this Subordinated Note and the last date, if any, on which this Subordinated Note was owned by the Company or any Affiliate of the Company, the undersigned confirms that this Subordinated Note is being:

CHECK ONE BOX BELOW:

- (1) acquired for the undersigned's own account, without transfer;
- (2) transferred to the Company;
- (3) transferred in accordance and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act");
- (4) transferred under an effective registration statement under the Securities Act;



- (5) transferred in accordance with and in compliance with Regulation S under the Securities Act;
- (6) transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an “accredited investor” (as defined in Rule 501(a)(4) under the Securities Act), that has furnished a signed letter containing certain representations and agreements; or
- (7) transferred in accordance with another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Paying Agent will refuse to register this Subordinated Note in the name of any person other than the registered Holder thereof; provided, however, that if box (5), (6) or (7) is checked, the Paying Agent may require, prior to registering any such transfer of this Subordinated Note, in its sole discretion, such legal opinions, certifications and other information as the Paying Agent may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act such as the exemption provided by Rule 144 under such Act.

Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Subordinated Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Exhibit A-2**  
**Form of Global Subordinated Notes**

**MIDLAND STATES BANCORP, INC.**

**5.50% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE SEPTEMBER 30, 2034**

[THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT (A) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER; (B) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).]

THIS SUBORDINATED NOTE IS A GLOBAL SUBORDINATED NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF CEDE & CO AS NOMINEE OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SUBORDINATED NOTE IS EXCHANGEABLE FOR SUBORDINATED NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SUBORDINATED NOTE (OTHER THAN A TRANSFER OF THIS SUBORDINATED NOTE AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES SPECIFIED IN THE INDENTURE.

UNLESS THIS SUBORDINATED NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY SUBORDINATED NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO, OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS SUBORDINATED NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS SUBORDINATED NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH RESTRICTIONS SET FORTH IN THE INDENTURE IDENTIFIED HEREIN.

THE SECURITY AND THE OBLIGATIONS OF THE COMPANY AS EVIDENCED BY THIS SUBORDINATED NOTE (1) ARE NOT A DEPOSIT AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND AND (2) ARE SUBORDINATE IN THE RIGHT OF PAYMENT TO ALL SENIOR INDEBTEDNESS (AS DEFINED IN THE INDENTURE IDENTIFIED HEREIN).

**CERTAIN ERISA CONSIDERATIONS:**

THE HOLDER OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN, UNLESS SUCH PURCHASER OR HOLDER IS ELIGIBLE FOR THE EXEMPTIVE RELIEF AVAILABLE UNDER U.S. DEPARTMENT OF LABOR PROHIBITED TRANSACTION CLASS EXEMPTION 96-23, 95-60, 91-38, 90-1 OR 84-14 OR ANOTHER APPLICABLE EXEMPTION OR ITS PURCHASE AND HOLDING OF THIS SUBORDINATED NOTE, OR ANY INTEREST HEREIN, ARE NOT PROHIBITED BY SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE WITH RESPECT TO SUCH PURCHASE AND HOLDING. ANY PURCHASER OR HOLDER OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER: (i) IT IS NOT AN EMPLOYEE BENEFIT PLAN OR OTHER PLAN TO WHICH TITLE I OF ERISA OR SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLANS, OR ANY OTHER PERSON OR ENTITY USING THE "PLAN ASSETS" OF ANY SUCH EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE OR (ii) SUCH PURCHASE OR HOLDING WILL NOT RESULT IN A PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE FOR WHICH FULL EXEMPTIVE RELIEF IS NOT AVAILABLE UNDER APPLICABLE STATUTORY OR ADMINISTRATIVE EXEMPTION.

ANY FIDUCIARY OF ANY PLAN WHO IS CONSIDERING THE ACQUISITION OF THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN SHOULD CONSULT WITH HIS OR HER LEGAL COUNSEL PRIOR TO ACQUIRING THIS SUBORDINATED NOTE OR ANY INTEREST HEREIN.

**MIDLAND STATES BANCORP, INC.****5.50% FIXED-TO-FLOATING RATE SUBORDINATED NOTE DUE 2034**

**THIS OBLIGATION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENT AGENCY OR FUND.**

1. **Indenture; Holder.** This Subordinated Note is one of a duly authorized issue of notes of Midland States Bancorp, Inc., an Illinois corporation (the “Company”), designated as the “5.50% Fixed-to-Floating Rate Subordinated Notes due 2034” (the “Subordinated Notes”) in an aggregate principal amount of \$27,250,000 and initially issued on September 20, 2019. The Company has issued this Subordinated Note under that certain Indenture dated as of September 20, 2019, relating to the Subordinated Notes, as the same may be amended or supplemented from time to time (“Indenture”), between the Company and UMB Bank National Association, a national banking association, as Trustee (the “Trustee”). All capitalized terms not otherwise defined in this Subordinated Note will have the meanings assigned to them in the Indenture. The terms of this Subordinated Note include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”). This Subordinated Note is subject to all such terms, and the Holder (as defined below) is referred to the Indenture and the Trust Indenture Act for a statement of such terms. To the extent any provision of this Subordinated Note irreconcilably conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling.

2. **Payment.** The Company, for value received, promises to pay to Cede & Co., or its registered assigns (the “Holder”), as nominee of The Depository Trust Company, the principal sum of [Y] DOLLARS (U.S.) (\$[Y]), plus accrued but unpaid interest on September 30, 2034 (“Stated Maturity”) and to pay interest thereon (i) from and including the original issue date of the Subordinated Notes, or from the most recent date to which interest has been paid or duly provided for, to but excluding September 30, 2029, at the rate of 5.50% per annum, computed on the basis of a 360-day year consisting of twelve 30-day months and payable semi-annually in arrears on March 30 and September 30 of each year (each, a “Fixed Interest Payment Date”), beginning March 30, 2020, and (ii) from and including September 30, 2029 to, but excluding the Stated Maturity or the early redemption date contemplated by Section 5 of this Subordinated Note (the “Floating Rate Period”), at the rate per annum, reset quarterly, equal to the Floating Interest Rate (as defined below) determined on the Floating Interest Determination Date (as defined below) of the applicable interest period plus 404.5 basis points, computed on the basis of a 360-day year and the actual number of days elapsed and payable quarterly in arrears on March 30, June 30, September 30 and December 30 (each quarterly period, a “Floating Interest Period”) of each year (each payment date, a “Floating Interest Payment Date”). Dollar amounts resulting from this calculation shall be rounded to the nearest cent, with one-half cent being rounded up. The term “Floating Interest Determination Date” means the date upon which the Floating Interest Rate is determined by the Calculation Agent pursuant to the Three-Month Term SOFR Conventions. The Company will pay all Additional Interest (as defined in the Indenture), if any, on the dates and in the amounts set forth in the Registration Rights Agreement (as defined in the Indenture).

- (a) An “Interest Payment Date” is either a Fixed Interest Payment Date or a Floating Interest Payment Date, as applicable.
- (b) The “Floating Interest Rate” means:
  - (i) initially Three-Month Term SOFR (as defined below).
  - (ii) Notwithstanding the foregoing clause (i) of this Section 2(b):
    - (1) If the Calculation Agent determines prior to the relevant Floating Interest Determination Date that a Benchmark Transition Event and its related Benchmark Replacement Date (each of such terms as defined below) have occurred with respect to Three-Month Term SOFR, then the Company shall promptly provide notice of such determination to the Holder and Section 2(c) will thereafter apply to all determinations, calculations and quotations made or obtained for the purposes of calculating the Floating Interest Rate payable on the Subordinated Notes during a relevant Floating Interest Period.
    - (2) However, if the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR, but for any reason the Benchmark Replacement has not been determined as of the relevant Floating Interest Determination Date, the Floating Interest Rate for the applicable Floating Interest Period will be equal to the Floating Interest Rate on the last Floating Interest Determination Date for the Subordinated Notes, as determined by the Calculation Agent.
  - (iii) If the then-current Benchmark is Three-Month Term SOFR and any of the foregoing provisions concerning the calculation of the interest rate and the payment of interest during the Floating Rate Period are inconsistent with any of the Three-Month Term SOFR Conventions (as defined below) determined by the Calculation Agent, then the relevant Three-Month Term SOFR Conventions will apply.
- (c) Effect of Benchmark Transition Event.
  - (i) If the Calculation Agent determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time (as defined below) in respect of any determination of the Benchmark (as defined below) on any date, the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Subordinated Notes during the relevant Floating Interest Period in respect of such determination on such date and all determinations on all subsequent dates.

- (ii) In connection with the implementation of a Benchmark Replacement, the Company will have the right to make Benchmark Replacement Conforming Changes from time to time.
- (iii) Any determination, decision or election that may be made by the Calculation Agent pursuant to the benchmark transition provisions set forth herein, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date, and any decision to take or refrain from taking any action or any selection:
  - (1) will be conclusive and binding absent manifest error;
  - (2) if made by the Company, will be made in the Company's sole discretion; and
  - (3) notwithstanding anything to the contrary in this Subordinated Note or the Indenture, shall become effective without consent from the Holder or any other party.
- (iv) For the avoidance of doubt, after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, interest payable on this Subordinated Note for the Floating Rate Period will be an annual rate equal to the sum of the applicable Benchmark Replacement and the spread specified on the face hereof.
- (v) As used in this Subordinated Note:
  - 1. "Benchmark" means, initially, Three-Month Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement.
  - 2. "Benchmark Replacement" means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if (a) the Calculation Agent cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date or (b) the then-current Benchmark is Three-Month Term SOFR and a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Three-Month Term SOFR (in which event no Interpolated Benchmark with respect to Three-Month Term SOFR shall be determined), then "Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:

- a. Compounded SOFR;
  - b. the sum of: (i) the alternate rate of interest that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (ii) the Benchmark Replacement Adjustment;
  - c. the sum of: (i) the ISDA Fallback Rate and (ii) the Benchmark Replacement Adjustment;
  - d. the sum of: (i) the alternate rate of interest that has been selected by the Company as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate of interest as a replacement for the then-current Benchmark for U.S. dollar denominated floating rate notes at such time and (ii) the Benchmark Replacement Adjustment.
3. "Benchmark Replacement Adjustment" means the first alternative set forth in the order below that can be determined by the Calculation Agent, as of the Benchmark Replacement Date:
- a. the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
  - b. if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment;
  - c. the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Calculation Agent giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar denominated floating rate notes at such time.

4. “Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Floating Interest Period,” timing and frequency of determining rates with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors and other administrative matters) that the Company decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Calculation Agent determines is reasonably necessary).
5. “Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:
  - a. in the case of clause (a) of the definition of “Benchmark Transition Event,” the relevant Reference Time in respect of any determination;
  - b. in the case of clause (b) or (c) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
  - c. in the case of clause (d) of the definition of “Benchmark Transition Event,” the date of such public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for purposes of such determination.

6. “Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:
  - a. if the Benchmark is Three-Month Term SOFR, (i) the Relevant Governmental Body has not selected or recommended a forward-looking term rate for a tenor of three months based on SOFR, (ii) the development of a forward-looking term rate for a tenor of three months based on SOFR that has been recommended or selected by the Relevant Governmental Body is not complete or (iii) the Calculation Agent determines that the use of a forward-looking rate for a tenor of three months based on SOFR is not administratively feasible;
  - b. a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;



- c. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
  - d. a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.
7. "Calculation Agent" means such bank or other entity (which may be the Company or one of its Affiliates) as may be appointed by the Company, in writing, to act as Calculation Agent for the Subordinated Notes during the Floating Rate Period, and who has accepted such appointment in writing.
8. "Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which will be compounded in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Floating Interest Period) being established by the Company in accordance with:
- a. the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; *provided* that:
  - b. if, and to the extent that, the Calculation Agent determines that Compounded SOFR cannot be determined in accordance with clause (a) above, then the rate, or methodology for this rate, and conventions for this rate that have been selected by the Company or its designee giving due consideration to any industry-accepted market practice for U.S. dollar denominated floating rate notes at such time.

For the avoidance of doubt, the calculation of Compounded SOFR will exclude the Benchmark Replacement Adjustment.

9. “Corresponding Tenor” with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding Business Day adjustment) as the applicable tenor for the then-current Benchmark.
10. “FRBNY” means the Federal Reserve Bank of New York.
11. “FRBNY’s Website” means the website of the FRBNY at <http://www.newyorkfed.org> or any successor source.
12. “Interpolated Benchmark” with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.
13. “ISDA” means the International Swaps and Derivatives Association, Inc. or any successor thereto.
14. “ISDA Definitions” means the 2006 ISDA Definitions published by the ISDA or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.
15. “ISDA Fallback Adjustment” means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.
16. “ISDA Fallback Rate” means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.
17. “Reference Time” with respect to any determination of a Benchmark means (1) if the Benchmark is Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions, and (2) if the Benchmark is not Three-Month Term SOFR, the time determined by the Calculation Agent after giving effect to the Benchmark Replacement Conforming Changes.

18. "Relevant Governmental Body" means the Federal Reserve Board and/or the FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or the FRBNY or any successor thereto.
19. "SOFR" means the daily Secured Overnight Financing Rate provided by the FRBNY, as the administrator of the benchmark (or a successor administrator), on the FRBNY's Website.
20. "Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.
21. "Term SOFR Administrator" means any entity designated by the Relevant Governmental Body as the administrator of Term SOFR (or a successor administrator).
22. "Three-Month Term SOFR" means the greater of (i) the rate for Term SOFR for a tenor of three months that is published by the Term SOFR Administrator at the Reference Time for any Floating Interest Period, as determined by the Calculation Agent after giving effect to the Three-Month Term SOFR Conventions; and (ii) zero percent (0.00%).
23. "Three-Month Term SOFR Conventions" means any determination, decision or election by the Calculation Agent with respect to any technical, administrative or operational matter (including with respect to the manner and timing of the publication of Three-Month Term SOFR, or changes to the definition of "Floating Interest Period", timing and frequency of determining Three-Month Term SOFR with respect to each Floating Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Calculation Agent decides may be appropriate to reflect the use of Three-Month Term SOFR as the Benchmark in a manner substantially consistent with market practice (or, if the Company decides that adoption of any portion of such market practice is not administratively feasible or if the Calculation Agent determines that no market practice for the use of Three-Month Term SOFR exists, in such other manner as the Calculation Agent determines is reasonably necessary).
24. "Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

(d) In the event that any Fixed Interest Payment Date during the Fixed Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and no additional dividends shall accrue as a result of that postponement. In the event that any Floating Interest Payment Date during the Floating Rate Period falls on a day that is not a Business Day (as defined below), the dividend payment due on that date shall be postponed to the next day that is a Business Day and dividends shall accrue to but excluding the date dividends are paid. However, if the postponement would cause the day to fall in the next calendar month during the Floating Interest Period, the Floating Interest Payment Date shall instead be brought forward to the immediately preceding Business Day. The term "Business Day" means any day other than a Saturday or Sunday or any other day on which banking institutions in the State of Illinois or State of New York are generally authorized or required by law or executive order to be closed.

The Company will pay interest on this Subordinated Note to the Person who is the registered Holder at the close of business on the fifteenth calendar day prior to the applicable Interest Payment Date, except as provided in Section 2.10 of the Indenture with respect to Defaulted Interest. This Subordinated Note will be payable as to principal and interest at the office or agency of the Paying Agent, or, at the option of the Company, payment of interest may be made by check delivered to the Holder at its address set forth in the Subordinated Note Register or by wire transfer to an account appropriately designated by the Person entitled to payment; *provided*, that the Paying Agent will have received written notice of such account designation at least five Business Days prior to the date of such payment (subject to surrender of this Subordinated Note in the case of a payment of interest at Maturity).

3. Paying Agent and Registrar. The Trustee will act as the initial Paying Agent and Registrar through its offices presently located at [●]. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. Subordination. The indebtedness of the Company evidenced by this Subordinated Note, including the principal thereof and interest thereon, is, to the extent and in the manner set forth in the Indenture, subordinate and junior in right of payment to obligations of the Company constituting the Senior Indebtedness (as defined in the Indenture) on the terms and subject to the terms and conditions as provided and set forth in Article XI of the Indenture and will rank *pari passu* in right of payment with all other Subordinated Notes. Holder, by the acceptance of this Subordinated Note, agrees to and will be bound by such provisions of the Indenture and authorizes and directs the Trustee on his behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided.

5. Redemption.

(a) The Company may, at its option, on any Interest Payment Date on or after September 30, 2029, redeem this Subordinated Note, in whole or in part, without premium or penalty, but in all cases in a principal amount with integral multiples of \$1,000. In addition, the Company may redeem all, but not a portion of the Subordinated Notes, at any time upon the occurrence of a Tier 2 Capital Event, Tax Event or an Investment Company Event. Any redemption of this Subordinated Note shall be subject to the prior approval of the Board of Governors of the Federal Reserve System (or its designee) or any successor agency, and any other bank regulatory agency, to the extent such approval shall then be required by law, regulation or policy. This Subordinated Note is not subject to redemption at the option of the Holder. The Redemption Price with respect to any redemption permitted under this Indenture will be equal to 100% of the principal amount of this Subordinated Note, or portion thereof, to be redeemed, plus accrued but unpaid interest and Additional Interest, if any, thereon to, but excluding, the Redemption Date.

(b) If less than the then outstanding principal amount of this Subordinated Note is redeemed, (i) a new note shall be issued representing the unredeemed portion without charge to the Holder thereof and (ii) such redemption shall be effected on a pro rata basis as to the Holder. For purposes of clarity, upon a partial redemption, a like percentage of the principal amount of every Subordinated Note held by every Holder shall be redeemed.

(c) Effectiveness of Redemption. If notice of redemption has been duly given and notwithstanding that any Subordinated Notes so called for redemption have not been surrendered for cancellation, on and after the Redemption Date interest shall cease to accrue on all Subordinated Notes so called for redemption, all Subordinated Notes so called for redemption shall no longer be deemed outstanding and all rights with respect to such Subordinated Notes shall forthwith on such Redemption Date cease and terminate (unless the Company shall default in the payment of the redemption price), except only the right of the Holder thereof to receive the amount payable on such redemption, without interest.

6. Events of Default; Acceleration. An “Event of Default” means any one of the events described in Section 4.01 of the Indenture. If an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture occurs, then the principal amount of all of the Outstanding Subordinated Notes, and accrued and unpaid interest, if any, on all Outstanding Subordinated Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or the Holder, and the Company waives demand, presentment for payment, notice of nonpayment, notice of protest, and all other notices. Notwithstanding the foregoing, because the Company will treat the Subordinated Notes as Tier 2 Capital, upon the occurrence of an Event of Default other than an Event of Default described in Section 4.01(1) or Section 4.01(2) of the Indenture, neither the Trustee nor the Holder may accelerate the Maturity of the Subordinated Notes and make the principal of, and any accrued and unpaid interest on, the Subordinated Notes, immediately due and payable. If any Event of Default occurs and is continuing, the Trustee may also pursue any other available remedy to collect the payment of principal of, and interest on, the Subordinated Notes then due and payable or to enforce the performance of any provision of the Subordinated Notes or the Indenture.

7. Failure to Make Payments. If the Company fails to make any payment of interest on this Subordinated Note when such interest becomes due and payable and such default continues for a period of 30 days, or if the Company fails to make any payment of the principal of this Subordinated Note when such principal becomes due and payable, the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holder, the whole amount then due and payable with respect to this Subordinated Note, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest at the rate or respective rates, as the case may be, provided for or with respect to this Subordinated Note or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by this Subordinated Note.

Upon an Event of Default, the Company may not declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Company's capital stock, make any payment of principal or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank equal with or junior to this Subordinated Note, or make any payments under any guarantee that ranks equal with or junior to this Subordinated Note, other than: (i) any dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, any class of Company's common stock; (ii) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto; (iii) as a result of a reclassification of Company's capital stock or the exchange or conversion of one class or series of Company's capital stock for another class or series of Company's capital stock; (iv) the purchase of fractional interests in shares of Company's capital stock in accordance with the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (v) purchases of any class of Company's common stock related to the issuance of common stock or rights under any benefit plans for Company's directors, officers or employees or any of Company's dividend reinvestment plans.

8. Denominations, Transfer, Exchange. The Subordinated Notes are issuable only in registered form without interest coupons in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. The transfer of this Subordinated Note may be registered and this Subordinated Note may be exchanged as provided in the Indenture. The Registrar may require the Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require the Holder to pay any taxes and fees required by law or permitted by the Indenture.

9. Charges and Transfer Taxes. No service charge will be made for any registration of transfer or exchange of this Subordinated Note, or any redemption or repayment of this Subordinated Note, or any conversion or exchange of this Subordinated Note for other types of securities or property, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of this Subordinated Note from the Holder requesting such transfer or exchange.

10. Persons Deemed Owners. The Company and the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Subordinated Note is registered as the owner hereof for all purposes, whether or not this Subordinated Note is overdue, and neither the Company, the Trustee nor any such agent will be affected by notice to the contrary.

11. Amendments; Waivers. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Subordinated Notes at any time by the Company and the Trustee with the consent of the holders of a majority in principal amount of the then Outstanding Subordinated Notes. The Indenture also contains provisions permitting the holders of specified percentages in principal amount of the then Outstanding Subordinated Notes, on behalf of the holders of all Subordinated Notes, to waive certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Subordinated Note will be conclusive and binding upon such Holder and upon all future holders of this Subordinated Note and of any Subordinated Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Subordinated Note.

12. No Impairment. No reference herein to the Indenture and no provision of this Subordinated Note or of the Indenture will alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (if any) and Additional Interest on this Subordinated Note at the times, place and rate as herein prescribed.

13. Sinking Fund; Convertibility. This Subordinated Note is not entitled to the benefit of any sinking fund. This Subordinated Note is not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any Subsidiary.

14. No Recourse Against Others. No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Subordinated Note, or for any claim based thereon or otherwise in respect thereof, will be had against any past, present or future shareholder, employee, officer, or director, as such, of the Company or of any predecessor or successor, either directly or through the Company or any predecessor or successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Subordinated Note by the Holder and as part of the consideration for the issuance of this Subordinated Note.

15. Authentication. This Subordinated Note will not be valid until authenticated by the manual signature of the Trustee or an Authenticating Agent.

16. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= custodian), and U/G/M/A (= Uniform Gifts to Minors Act). Additional abbreviations may also be used though not in the above list.

17. Available Information. The Company will furnish to the Holder upon written request and without charge a copy of the Indenture. Requests by the Holder to the Company may be made to: Midland States Bancorp, Inc., 1201 Network Centre Drive, Effingham, Illinois 62401, Attention: Douglas J. Tucker, Corporate Counsel.

18. Governing Law. THIS SUBORDINATED NOTE WILL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK AND WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY LAWS OR PRINCIPLES OF CONFLICT OF LAWS THAT WOULD APPLY THE LAWS OF A DIFFERENT JURISDICTION.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Subordinated Note to be duly executed.

**MIDLAND STATES BANCORP, INC.**

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

Name: Jeffrey G. Ludwig

Title: Chief Executive Officer and President

*[Signature page to Subordinated Note]*

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Subordinated Notes of Midland States Bancorp, Inc., referred to in the within-mentioned Indenture:

**UMB BANK NATIONAL ASSOCIATION,  
a national banking association, as Trustee**

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

Name:

Title:

Dated:

*[Signature page to Certificate of Authentication]*

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**ASSIGNMENT FORM**

To assign this Subordinated Note, fill in the form below: (I) or (we) assign and transfer this Subordinated Note to:

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(Print or type assignee's name, address and zip code)

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(Insert assignee's social security or tax I.D. No.)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Subordinated Note on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_ Your signature: \_\_\_\_\_  
(Sign exactly as your name appears on the face of this Subordinated Note)

Tax Identification No: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_  
(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

The undersigned certifies that it [is / is not] an Affiliate of the Company and that, to its knowledge, the proposed transferee [is / is not] an Affiliate of the Company.

In connection with any transfer or exchange of this Subordinated Note occurring prior to the date that is one year after the later of the date of original issuance of this Subordinated Note and the last date, if any, on which this Subordinated Note was owned by the Company or any Affiliate of the Company, the undersigned confirms that this Subordinated Note is being:

CHECK ONE BOX BELOW:

- (1) acquired for the undersigned's own account, without transfer;
- (2) transferred to the Company;
- (3) transferred in accordance and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act");
- (4) transferred under an effective registration statement under the Securities Act;

- (5) transferred in accordance with and in compliance with Regulation S under the Securities Act;
- (6) transferred to an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) or an “accredited investor” (as defined in Rule 501(a)(4) under the Securities Act), that has furnished a signed letter containing certain representations and agreements; or
- (7) transferred in accordance with another available exemption from the registration requirements of the Securities Act of 1933, as amended.

Unless one of the boxes is checked, the Paying Agent will refuse to register this Subordinated Note in the name of any person other than the registered Holder thereof; provided, however, that if box (5), (6) or (7) is checked, the Paying Agent may require, prior to registering any such transfer of this Subordinated Note, in its sole discretion, such legal opinions, certifications and other information as the Paying Agent may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act such as the exemption provided by Rule 144 under such Act.

Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_

(Signatures must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15).

TO BE COMPLETED BY PURCHASER IF BOX (1) OR (3) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Subordinated Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SUBORDINATED NOTE

The following increases or decreases in this Global Subordinated Note have been made:

Date of Exchange	Amount of decrease in principal amount of this Global Subordinated Note	Amount of increase in principal amount of this Global Subordinated Note	Principal amount of this Global Subordinated Note following such decrease or increase	Signature of authorized officer of Trustee or Notes Custodian
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## FORM OF REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (the “Agreement”) is dated as of September 20, 2019 and is made by and among Midland States Bancorp, Inc., an Illinois corporation (the “Company”), and the several purchasers identified on the signature pages hereto (collectively, the “Purchasers”).

This Agreement is made pursuant to the Subordinated Note Purchase Agreement, dated September 20, 2019 by and among the Company and the Purchasers (the “Purchase Agreement”), which provides for the sale by the Company of \$72,750,000 aggregate principal amount of the Company’s 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029 (the “2029 Notes”) to certain of the Purchasers, and \$27,250,000 aggregate principal amount of the Company’s 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034 (the “2034 Notes” and, together with the 2029 Notes, the “Subordinated Notes,” and each, a “Series” of Subordinated Notes) to certain of the Purchasers. To induce the Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the Purchasers’ obligations thereunder, the Company has agreed to provide to the Purchasers and their respective direct and indirect transferees and assigns the registration rights set forth in this Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. **Definitions.** As used in this Agreement, the following capitalized defined terms shall have the following meanings:

“1933 Act” shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations of the SEC promulgated thereunder.

“1934 Act” shall mean the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the SEC promulgated thereunder.

“2029 Indenture” shall mean the Indenture, dated as of the date hereof, by and between the Company and UMB Bank National Association, as trustee, under which the 2029 Notes are to be issued, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“2029 Notes” shall have the meaning specified in the preamble to this Agreement.

“2034 Indenture” shall mean the Indenture, dated as of the date hereof, by and between the Company and UMB Bank National Association, as trustee, under which the 2034 Notes are to be issued, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“2034 Notes” shall have the meaning specified in the preamble to this Agreement.

“Additional Interest” shall have the meaning set forth in Section 2(e) hereof.

“Agreement” shall have the meaning set forth in the preamble to this Agreement.

“Business Day” shall mean any day other than a Saturday, Sunday or U.S. federal holiday or a day on which banking institutions or trust companies located in New York, New York are authorized or obligated to be closed.

“Closing Date” shall mean the date of this Agreement.

“Company” shall have the meaning set forth in the preamble to this Agreement and also includes the Company’s successors.

“Depository” shall mean The Depository Trust Company, or any other depository appointed by the Company, including any agent thereof; *provided, however*, that any such depository must at all times have an address in the Borough of Manhattan, The City of New York.

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“Event Date” shall have the meaning set forth in Section 2(e).

“Exchange Offer” shall mean, with respect to any Series, the exchange offer by the Company of Exchange Notes for Registrable Notes of such Series pursuant to Section 2(a) hereof.

“Exchange Offer Registration” shall mean a registration under the 1933 Act effected pursuant to Section 2(a) hereof.

“Exchange Offer Registration Statement” shall mean an exchange offer registration statement on Form S-4 (or, if applicable, on another appropriate form) covering the Registrable Notes, and all amendments and supplements to such registration statement, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated or deemed to be incorporated by reference therein.

“Exchange Notes” shall mean: (a) with respect to the 2029 Notes, the 5.00% Fixed-to-Floating Rate Subordinated Notes due 2029 issued by the Company under the Indenture containing terms substantially identical to the 2029 Notes, and (b) with respect to the 2034 Notes, the 5.50% Fixed-to-Floating Rate Subordinated Notes due 2034 issued by the Company under the Indenture containing terms substantially identical to the 2034 Notes, except, in each case, that (i) provisions relating to an increase in the stated rate of interest thereon upon the occurrence of a Registration Default shall be eliminated, and (ii) the transfer restrictions and legends relating to restrictions on ownership and transfer thereof as a result of the issuance of the Subordinated Notes without registration under the 1933 Act shall be eliminated, and in each case to be offered to Holders of Registrable Notes of such Series in exchange for Registrable Notes of such Series pursuant to the Exchange Offer.

“FINRA” shall mean the Financial Industry Regulatory Authority, Inc.

“Holder” shall mean (i) the Purchasers, and each of their respective successors, assigns and direct and indirect transferees who become registered owners of Registrable Notes under the Indenture, in each case for so long as they own any Registrable Notes and (ii) each Participating Broker-Dealer that holds Exchange Notes for so long as such Participating Broker-Dealer is required to deliver a prospectus meeting the requirements of the 1933 Act in connection with any resale of such Exchange Notes.

“Indentures” shall mean the 2029 Indenture and the 2034 Indenture.

“Majority Holders” shall mean the Holders of a majority of the aggregate principal amount of Registrable Notes outstanding, treated for purposes of this definition as one class; *provided* that, for purposes of this definition, whenever the consent or approval of Holders of a specified percentage of Registrable Notes is required hereunder, Registrable Notes held by the Company or any of its affiliates (as such term is defined in Rule 405 under the 1933 Act) shall not be deemed to be outstanding.

“Notifying Broker-Dealer” shall have the meaning set forth in Section 3(f).

“Participating Broker-Dealer” shall have the meaning set forth in Section 3(f).

“Person” shall mean an individual, partnership, joint venture, limited liability company, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

“Prospectus” shall mean the prospectus included in a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Notes covered by a Shelf Registration Statement, and by all other amendments and supplements to a prospectus, including post-effective amendments, and in each case including all material incorporated or deemed to be incorporated by reference therein.

“Purchase Agreement” shall have the meaning set forth in the preamble to this Agreement.

“Purchasers” shall have the meaning set forth in the preamble of this Agreement.

“Registrable Notes” shall mean the Subordinated Notes; *provided, however*, that any Subordinated Notes shall cease to be Registrable Notes when (i) a Registration Statement with respect to such Subordinated Notes shall have been declared effective under the 1933 Act and such Subordinated Notes shall have been exchanged or disposed of pursuant to such Registration Statement, (ii) such Subordinated Notes shall have been sold to the public pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the 1933 Act, or are eligible to be resold pursuant to Rule 144 without regard to the public information requirements thereunder, (iii) such Subordinated Notes shall have ceased to be outstanding, or (iv) except for Subordinated Notes that are ineligible to be exchanged in the Exchange Offer, when the Exchange Offer is consummated.

“Registration Default” shall have the meaning set forth in Section 2(e).

“Registration Expenses” shall mean any and all reasonable expenses incident to performance of or compliance by the Company with this Agreement, including without limitation: (i) all SEC, stock exchange or FINRA registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state or other securities or blue sky laws and compliance with the rules of FINRA (including reasonable fees and disbursements of one counsel for any Holders in connection with qualification of any of the Exchange Notes or Registrable Notes under state or other securities or blue sky laws and any filing with and review by FINRA), (iii) all expenses of any Persons in preparing, printing and distributing any Registration Statement, any Prospectus, any amendments or supplements thereto, securities sales agreements, certificates representing the Subordinated Notes or Exchange Notes and other documents relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) all fees and expenses incurred in connection with the listing, if any, of any of the Subordinated Notes or Exchange Notes on any securities exchange or exchanges or on any quotation system, (vi) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vii) the fees and disbursements of counsel for the Company and the fees and expenses of independent public accountants for the Company or for any other Person, business or assets whose financial statements are included in any Registration Statement or Prospectus, including the expenses of any special audits or “comfort letters required by or incident to such performance and compliance, and (viii) the fees and expenses of the Trustee, any registrar, any depository, any paying agent, any escrow agent or any custodian, in each case including fees and disbursements of their respective counsel, but excluding any underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder.

“Registration Statement” shall mean any registration statement of the Company relating to any offering of the Exchange Notes or Registrable Notes pursuant to the provisions of this Agreement (including, without limitation, any Exchange Offer Registration Statement and any Shelf Registration Statement), and all amendments and supplements to any such Registration Statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated or deemed to be incorporated by reference therein.

“SEC” shall mean the Securities and Exchange Commission or any successor thereto.

“Series” shall have the meaning specified in the preamble to this Agreement.

“Shelf Registration” shall mean a registration effected pursuant to Section 2(b) hereof.

“Shelf Registration Event” shall have the meaning set forth in Section 2(b) hereof.

“Shelf Registration Statement” shall mean a “shelf” registration statement of the Company pursuant to the provisions of Section 2(b) of this Agreement which covers all of the Registrable Notes, as the case may be, on an appropriate form under Rule 415 under the 1933 Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated or deemed to be incorporated by reference therein.

“Subordinated Notes” shall have the meaning set forth in the preamble to this Agreement.

“TIA” shall mean the Trust Indenture Act of 1939, as amended from time to time, and the rules and regulations of the SEC promulgated thereunder.

“Trustee” shall mean the trustee with respect to the Subordinated Notes and the Exchange Notes under the Indenture.

For purposes of this Agreement, (i) all references in this Agreement to any Registration Statement, preliminary prospectus or Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the SEC pursuant to its Electronic Data Gathering, Analysis and Retrieval system; (ii) all references in this Agreement to financial statements and schedules and other information which is “contained,” “included” or “stated” in any Registration Statement, preliminary prospectus or Prospectus (or other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated or deemed to be incorporated by reference in such Registration Statement, preliminary prospectus or Prospectus, as the case may be; (iii) all references in this Agreement to amendments or supplements to any Registration Statement, preliminary prospectus or Prospectus shall be deemed to mean and include the filing of any document under the 1934 Act which is incorporated or deemed to be incorporated by reference in such Registration Statement, preliminary prospectus or Prospectus, as the case may be; (iv) all references in this Agreement to Rule 144, Rule 144A, Rule 405 or Rule 415 under the 1933 Act, and all references to any sections or subsections thereof or terms defined therein, shall in each case include any successor provisions thereto; and (v) all references in this Agreement to days (but not to Business Days) shall mean calendar days.

## **2. Registration Under the 1933 Act.**

(a) Exchange Offer Registration. The Company shall (A) use its commercially reasonable efforts to file with the SEC on or prior to the 90th day after the Closing Date an Exchange Offer Registration Statement covering the offer by the Company to the Holders to exchange all of the Registrable Notes of each Series for a like aggregate principal amount of Exchange Notes with respect to such Series, (B) use its commercially reasonable efforts to cause such Exchange Offer Registration Statement to be declared effective by the SEC no later than the 120th day after the Closing Date, (C) use its commercially reasonable efforts to cause such Registration Statement to remain effective until the closing of the Exchange Offer and (D) use its commercially reasonable efforts to consummate the Exchange Offer no later than 45 days after the effective date of the Exchange Offer Registration Statement. Upon the effectiveness of the Exchange Offer Registration Statement, the Company shall promptly commence the Exchange Offer.

In connection with the Exchange Offer, the Company shall:

(i) promptly mail or otherwise transmit, in compliance with the applicable procedures of the depository for such Registrable Notes, to each Holder a copy of the Prospectus forming part of the Exchange Offer Registration Statement, together with an appropriate letter of transmittal and related documents;

(ii) keep the Exchange Offer open for not less than 20 Business Days (or longer if required by applicable law) after the date notice thereof is mailed to the Holders and, during the Exchange Offer, offer to all Holders who are legally eligible to participate in the Exchange Offer the opportunity to exchange their Registrable Notes for Exchange Notes;

(iii) use the services of a depository with an address in the Borough of Manhattan, City of New York for the Exchange Offer;

(iv) permit Holders to withdraw tendered Registrable Notes at any time prior to the close of business, Eastern time, on the last Business Day on which the Exchange Offer shall remain open, by sending to the institution and at the address specified in the Prospectus or the related letter of transmittal or related documents a facsimile transmission or letter setting forth the name of such Holder, the principal amount of Registrable Notes delivered for exchange, and a statement that such Holder is withdrawing its election to have such Subordinated Notes exchanged, and otherwise complying with the applicable procedures of the Depository;



(v) notify each Holder that any Registrable Security not tendered will remain outstanding and continue to accrue interest, but will not retain any rights under this Agreement (except in the case of Participating Broker-Dealers as provided herein); and

(vi) otherwise comply in all material respects with all applicable laws relating to the Exchange Offer.

The Exchange Notes shall be issued under the Indenture, which shall be qualified under the TIA. The Indenture shall provide that the Exchange Notes issued in respect of any Series and the Subordinated Notes of such Series shall vote and consent together on all matters as a single class and shall constitute a single series of debt securities issued under the Indenture.

As soon as reasonably practicable after the close of the Exchange Offer, the Company shall:

(i) accept for exchange all Registrable Notes duly tendered and not validly withdrawn pursuant to the Exchange Offer in accordance with the terms of the Exchange Offer Registration Statement and the letter of transmittal that is an exhibit thereto;

(ii) deliver, or cause to be delivered, to the Trustee for cancellation all Registrable Notes so accepted for exchange by the Company; and

(iii) cause the Trustee promptly to authenticate and deliver Exchange Notes to each Holder of Registrable Notes so accepted for exchange equal in principal amount to the principal amount of the Registrable Notes of such Holder so accepted for exchange.

For the avoidance of doubt, notwithstanding any provision herein purporting to require physical mailing, delivery or acceptance of any document or instrument, the Company may conduct the Exchange Offer exclusively through the automated tender offer program of the Depository, provided that this provision shall apply only to Registrable Notes held in the form of beneficial interests in a global note deposited with (or held by a custodian for) the Depository Trust Company.

Interest on each Exchange Security will accrue from the last date on which interest was paid or duly provided for on the Subordinated Notes surrendered in exchange therefor or, if no interest has been paid or duly provided for on such Subordinated Notes, from the Closing Date. The Exchange Offer shall not be subject to any conditions, other than (i) that the Exchange Offer, or the making of any exchange by a Holder, does not violate any applicable law or any applicable interpretation of the staff of the SEC, (ii) that no action or proceeding shall have been instituted or threatened in any court or by or before any governmental agency with respect to the Exchange Offer which, in the Company's judgment, would reasonably be expected to impair the ability of the Company to proceed with the Exchange Offer, and (iii) that the Holders tender the Registrable Securities to the Company in accordance with the Exchange Offer. Each Holder of Registrable Notes who wishes to exchange such Registrable Notes for Exchange Notes in the Exchange Offer will be required to represent that (i) it is not an affiliate (as defined in Rule 405 under the 1933 Act) of the Company or if it is an affiliate, it will comply with the registration and prospectus delivery requirements of the 1933 Act to the extent applicable, (ii) any Exchange Notes to be received by it will be acquired in the ordinary course of business, (iii) at the time of the commencement of the Exchange Offer it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the 1933 Act) of the Exchange Notes in violation of the provisions of the 1933 Act, (iv) if such Holder is not a broker-dealer, that it is not engaged in, and does not intend to engage in, the distribution of the Exchange Notes, (v) if such Holder is a broker-dealer that will receive Exchange Notes for its own account in exchange for Registrable Notes acquired as a result of market-making or other trading activities, then such broker-dealer will deliver a Prospectus (or, to the extent permitted by law, make available a Prospectus to purchasers) in connection with any resale of such Exchange Notes; and (vi) it is not acting on behalf of any Person who could not truthfully make the statements set forth in clauses (i) – (v) immediately above, and shall be required to make such other representations as may be reasonably necessary under applicable SEC rules, regulations or interpretations to render the use of Form S-4 or another appropriate form under the 1933 Act available.

(b) Shelf Registration. (i) If, because of any change in law or applicable interpretations thereof by the staff of the SEC, the Company is not permitted to effect the Exchange Offer as contemplated by Section 2(a) hereof, or (ii) if for any other reason (A) the Exchange Offer Registration Statement is not declared effective within 120 days following the Closing Date or (B) the Exchange Offer is not consummated within 45 days after effectiveness of the Exchange Offer Registration Statement (provided that if the Exchange Offer Registration Statement shall be declared effective after such 120-day period or if the Exchange Offer shall be consummated after such 45-day period, then the Company's obligations under this clause (ii) arising from the failure of the Exchange Offer Registration Statement to be declared effective within such 120-day period or the failure of the Exchange Offer to be consummated within such 45-day period, respectively, shall terminate), or (iii) if any Holder delivers a written representation to the Company that such Holder was not eligible to participate in the Exchange Offer or validly elects to participate in the Exchange Offer but does not receive Exchange Notes that are freely tradeable without any limitations or restrictions under the 1933 Act (each of the foregoing, a "Shelf Registration Event"), the Company shall, at its cost:

(A) use its commercially reasonable efforts to file with the SEC on or prior to (a) the 180th day after the Closing Date or (b) the 60th day after any such Shelf Registration Event, whichever is later, a Shelf Registration Statement relating to the offer and sale of the Registrable Notes by the Holders from time to time in accordance with the methods of distribution elected by the Majority Holders of such Registrable Notes and set forth in such Shelf Registration Statement;

(B) use its commercially reasonable efforts to cause such Shelf Registration Statement to be declared or become effective as promptly as practicable, but in no event later than (a) the 225<sup>th</sup> day after the Closing Date or (b) the 105th day after any such Shelf Registration Event, whichever is later. In the event that the Company is required to file a Shelf Registration Statement pursuant to clause (iii) above, the Company shall file and use its commercially reasonable efforts to have declared effective by the SEC both an Exchange Offer Registration Statement pursuant to Section 2(a) with respect to all Registrable Notes and a Shelf Registration Statement (which may be a combined Registration Statement with the Exchange Offer Registration Statement) with respect to offers and sales of Registrable Notes held by such Holder described in clause (iii) above;

(C) use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required, in order to permit the Prospectus forming part thereof to be usable by Holders for a period of 180 days after the date the Shelf Registration Statement was declared or became effective (subject to extension pursuant to the last paragraph of Section 3) or, if earlier, when all of the Registrable Notes covered by such Shelf Registration Statement (i) have been sold pursuant to the Shelf Registration Statement in accordance with the intended method of distribution thereunder, or (ii) cease to be Registrable Notes; and

(D) notwithstanding any other provisions hereof, use its commercially reasonable efforts to ensure that (i) any Shelf Registration Statement and any amendment thereto and any Prospectus forming a part thereof and any supplements thereto comply in all material respects with the 1933 Act, (ii) any Shelf Registration Statement and any amendment thereto does not, when it becomes effective, 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 (iii) any Prospectus forming part of any Shelf Registration Statement and any amendment or supplement to such Prospectus does not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, clauses (ii) and (iii) shall not apply to any statement in or omission from a Shelf Registration Statement or a Prospectus made in reliance upon and conformity with information relating to any Holder or Participating Broker-Dealer of Registrable Notes furnished to the Company in writing by such Holder or Participating Broker-Dealer, respectively, expressly for use in such Shelf Registration Statement or Prospectus.

The Company further agrees, if necessary, to supplement or amend the Shelf Registration Statement if reasonably requested by the Majority Holders with respect to information relating to the Holders and otherwise as required by Section 3(b) below, to use its commercially reasonable efforts to cause any such amendment to become effective and such Shelf Registration Statement to become usable as soon as reasonably practicable thereafter and to furnish to the Holders of Registrable Notes copies of any such supplement or amendment promptly after its being used or filed with the SEC.

(c) Expenses. The Company shall pay all Registration Expenses in connection with the registration pursuant to Section 2(a) and 2(b) and, in the case of any Shelf Registration Statement, will reimburse the Holders for the reasonable fees and disbursements of one counsel (in addition to any local counsel) designated in writing by the Majority Holders to act as counsel for the Holders of the Registrable Notes in connection therewith; provided, however, that the Company shall not be responsible for reimbursement for the fees and disbursements of such counsel in an aggregate amount in excess of \$10,000. Each Holder shall pay all fees and disbursements of its counsel other than as set forth in the preceding sentence or in the definition of Registration Expenses and all underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of such Holder's Registrable Notes pursuant to a Shelf Registration Statement.

(d) Effective Registration Statement.

(i) The Company shall be deemed not to have used its commercially reasonable efforts to cause the Exchange Offer Registration Statement or any Shelf Registration Statement, as the case may be, to become, or to remain, effective during the requisite periods set forth herein if the Company voluntarily takes any action that could reasonably be expected to result in any such Registration Statement not being declared effective or remaining effective or in the Holders of Registrable Notes (including, under the circumstances contemplated by Section 3(f) hereof, Exchange Notes) covered thereby not being able to exchange or offer and sell such Registrable Notes during that period unless (A) such action is required by applicable law or (B) such action is taken by the Company in good faith and for valid business reasons (but not including avoidance of the Company's obligations hereunder), including, but not limited to, the acquisition or divestiture of assets or a material corporate transaction or event, or if the Company determines in good faith that effecting or maintaining the availability of the registration would materially and adversely affect an offering of securities of the Company or if the Company is in possession of material non-public information the disclosure of which would not be in the best interests of the Company, in each case so long as the Company promptly complies with the notification requirements of Section 3(k) hereof, if applicable. Nothing in this paragraph shall prevent the accrual of Additional Interest on any Registrable Notes or Exchange Notes.

(ii) During any 365-day period, the Company may, by notice as described in Section 3(e), suspend the availability of a Shelf Registration Statement (and, if the Exchange Offer Registration Statement is being used in connection with the resale of Exchange Notes by Participating Broker-Dealers as contemplated by Section 3(f), the Exchange Offer Registration Statement) and the use of the related Prospectus for up to two periods of up to 60 consecutive days each (except for the consecutive 60-day period immediately prior to final maturity of the Subordinated Notes), but no more than an aggregate of 120 days during any 365-day period, upon (a) the happening of any event or the discovery of any fact referred to in Section 3(e)(vi), or (b) if the Company determines in good faith that effecting or maintaining the availability of the registration would materially and adversely affect an offering of securities of the Company or if the Company is in possession of material non-public information the disclosure of which would not be in the best interests of the Company, in each case subject to compliance by the Company with its obligations under the last paragraph of Section 3.

(e) Increase in Interest Rate. In the event that:

- (i) the Exchange Offer Registration Statement is not filed with the SEC on or prior to the 90th day following the Closing Date,
- (ii) the Exchange Offer Registration Statement is not declared effective by the SEC on or prior to the 120th day following the Closing Date,
- (iii) the Exchange Offer is not consummated on or prior to the 45th day following the effective date of the Exchange Offer Registration Statement,

(iv) if required, a Shelf Registration Statement is not filed with the SEC on or prior to (A) the 180th day following the Closing Date or (B) the 60th day after a Shelf Registration Event, whichever is later, or

(v) if required, a Shelf Registration Statement is not declared or otherwise has not become effective on or prior to (a) the 225th day following the Closing Date or (b) the 105<sup>th</sup> day after a Shelf Registration Event, whichever is later, or

(vi) a Shelf Registration Statement is declared effective by the SEC or has otherwise become effective, but such Shelf Registration Statement ceases to be effective or such Shelf Registration Statement or the Prospectus included therein ceases to be usable in connection with resales of Registrable Notes for any reason and (A) the aggregate number of days in any consecutive 365-day period for which the Shelf Registration Statement or such Prospectus shall not be effective or usable exceeds 120 days, (B) the Shelf Registration Statement or such Prospectus shall not be effective or usable for more than two periods (regardless of duration) in any consecutive 365-day period or (C) the Shelf Registration Statement or such Prospectus shall not be effective or usable for a period of more than 90 consecutive days, or

(vii) the Exchange Offer Registration Statement is declared effective by the SEC but, if the Exchange Offer Registration Statement is being used in connection with the resale of Exchange Notes as contemplated by Section 3(f) of this Agreement, the Exchange Offer Registration Statement ceases to be effective or the Exchange Offer Registration Statement or the Prospectus included therein ceases to be usable in connection with resales of Exchange Notes for any reason during the 180-day period referred to in Section 3(f)(B) of this Agreement (as such period may be extended pursuant to the last paragraph of Section 3 of this Agreement) and (A) the aggregate number of days in any consecutive 365-day period for which the Exchange Offer Registration Statement or such Prospectus shall not be effective or usable exceeds 120 days, (B) the Exchange Offer Registration Statement or such Prospectus shall not be effective or usable for more than two periods (regardless of duration) in any consecutive 365-day period or (C) the Exchange Offer Registration Statement or the Prospectus shall not be effective or usable for a period of more than 90 consecutive days,

(each of the events referred to in clauses (i) through (vii) above being hereinafter called a “Registration Default”), the per annum interest rate borne by the Registrable Notes shall be increased (“Additional Interest”) by one-quarter of one percent (0.25%) per annum immediately following such 90-day period in the case of clause (i) above, immediately following such 120-day period in the case of clause (ii) above, immediately following such 45-day period in the case of clause (iii) above, immediately following any such 180-day period or 60-day period, whichever ends later, in the case of clause (iv) above, immediately following any such 225-day period or 105-day period, as applicable, in the case of clause (v) above, immediately following the 120<sup>th</sup> day in any consecutive 365-day period, as of the first day of the third period in any consecutive 365-day period or immediately following the 90th consecutive day, whichever occurs first, that a Shelf Registration Statement shall not be effective or a Shelf Registration Statement or the Prospectus included therein shall not be usable as contemplated by clause (vi) above, or immediately following the 120<sup>th</sup> day in any consecutive 365-day period, as of the first day of the third period in any consecutive 365-day period or immediately following the 90<sup>th</sup> consecutive day, whichever occurs first, that the Exchange Offer Registration Statement shall not be effective or the Exchange Offer Registration Statement or the Prospectus included therein shall not be usable as contemplated by clause (vii) above, which rate will be increased by an additional one-quarter of one percent (0.25%) per annum immediately following each 90-day period that any Additional Interest continues to accrue under any circumstances; *provided, however*, that, if at any time more than one Registration Default has occurred and is continuing, then, until the next date that there is no Registration Default, the increase in interest rate provided for by this paragraph shall apply as if there occurred a single Registration Default that begins on the date that the earliest such Registration Default occurred and ends on such date that there is no Registration Default; *provided further*, that the aggregate increase in such annual interest rate may in no event exceed one-half of one percent (0.50%) per annum. Upon the filing of the Exchange Offer Registration Statement after the 90-day period described in clause (i) above, the effectiveness of the Exchange Offer Registration Statement after the 120-day period described in clause (ii) above, the consummation of the Exchange Offer after the 45-day period described in clause (iii) above, the filing of the Shelf Registration Statement after the 180-day period or 60-day period, as the case may be, described in clause (iv) above, the effectiveness of a Shelf Registration Statement after the 225-day period or 105-day period, as applicable, described in clause (v) above, or the Shelf Registration Statement once again being effective or the Shelf Registration Statement and the Prospectus included therein becoming usable in connection with resales of Registrable Notes, as the case may be, in the case of clause (vi) above, or the Exchange Offer Registration Statement once again becoming effective or the Exchange Offer Registration Statement and the Prospectus included therein becoming usable in connection with resales of Exchange Notes, as the case may be, in the case of clause (vii) thereof, the interest rate borne by the Subordinated Notes from the date of such filing, effectiveness, consummation or resumption of effectiveness or usability, as the case may be, shall be reduced to the original interest rate so long as no other Registration Default shall have occurred and shall be continuing at such time and the Company is otherwise in compliance with this paragraph; *provided, however*, that, if after any such reduction in interest rate, one or more Registration Defaults shall again occur, the interest rate shall again be increased pursuant to the foregoing provisions (as if it were the original Registration Default). Notwithstanding anything in this Agreement to the contrary, the Company will not be obligated to pay any Additional Interest in the case of a Shelf Registration Statement with respect to any Holder of Registrable Notes who fails to timely provide all information with respect to Holder that is reasonably requested by the Company to enable it to timely comply with its obligations under Section 2(b).

The Company shall notify the Trustee within three Business Days after each and every date on which an event occurs in respect of which Additional Interest is required to be paid (an “Event Date”). Additional Interest shall be paid by depositing with the Trustee, in trust, for the benefit of the Holders of Registrable Notes, on or before the applicable interest payment date, immediately available funds in sums sufficient to pay the Additional Interest then due. The Additional Interest due shall be payable on each interest payment date to the record Holder of Registrable Notes entitled to receive the interest payment to be paid on such date as set forth in the Indenture. Each obligation to pay Additional Interest shall be deemed to accrue from and including the day following the applicable Event Date.

Anything herein to the contrary notwithstanding, any Holder who was, at the time the Exchange Offer was pending and consummated, eligible to exchange, and did not validly tender, its Subordinated Notes for Exchange Notes in the Exchange Offer will not be entitled to receive any Additional Interest.

(f) Specific Enforcement. Without limiting the remedies available to the Holders or any Participating Broker-Dealer, the Company acknowledges that any failure by the Company to comply with its obligations under Sections 2(a) and 2(b) hereof may result in material irreparable injury to the Holders or the Participating Broker-Dealers for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, any Holder and any Participating Broker-Dealer may seek such relief as may be required to specifically enforce the Company’s obligations under Sections 2(a) and 2(b).

**3. Registration Procedures. In connection with the obligations of the Company with respect to the Registration Statements pursuant to Sections 2(a) and 2(b) hereof, the Company shall:**

(a) prepare and file with the SEC a Registration Statement or, if required, Registration Statements, within the time periods specified in Section 2, on the appropriate form under the 1933 Act, which form (i) shall be selected by the Company, (ii) shall, in the case of a Shelf Registration Statement, be available for the sale of the Registrable Notes by the selling Holders thereof and (iii) shall comply as to form in all material respects with the requirements of the applicable form and include or incorporate by reference all financial statements required by the SEC to be filed therewith or incorporated by reference therein, and use its commercially reasonable efforts to cause such Registration Statement to become effective and remain effective for the applicable period in accordance with Section 2 hereof;

(b) prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary under applicable law to keep such Registration Statement effective for the applicable period in accordance with Section 2 hereof; cause each Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the 1933 Act; and comply with the provisions of the 1933 Act and the 1934 Act with respect to the disposition of all Registrable Notes covered by each Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the selling Holders thereof;

(c) in the case of a Shelf Registration, (i) notify each Holder of Registrable Notes, at least ten Business Days prior to filing, that a Shelf Registration Statement with respect to the Registrable Notes is being filed and advising such Holders that the distribution of Registrable Notes will be made in accordance with the method elected by the Majority Holders; (ii) furnish to each Holder of Registrable Notes and counsel for the Holders, without charge, as many copies of each Prospectus, including each preliminary Prospectus, and any amendment or supplement thereto and such other documents as such Holder or counsel may reasonably request, including financial statements and schedules and, if such Holder or counsel so requests, all exhibits (including those incorporated by reference) in order to facilitate the public sale or other disposition of the Registrable Notes; and (iii) subject to the penultimate paragraph of this Section 3, the Company hereby consents to the use of the Prospectus, including each preliminary Prospectus, or any amendment or supplement thereto by each of the Holders of Registrable Notes in accordance with applicable law in connection with the offering and sale of the Registrable Notes covered by and in the manner described in any Prospectus or any amendment or supplement thereto;

(d) use its commercially reasonable efforts to register or qualify the Registrable Notes under all applicable state securities or “blue sky” laws of such jurisdictions as any Holder of Registrable Notes covered by a Registration Statement shall reasonably request, to cooperate with the Holders of any Registrable Notes in connection with any filings required to be made with FINRA, to keep each such registration or qualification effective during the period such Registration Statement is required to be effective and do any and all other acts and things which may be reasonably necessary or advisable to enable such Holder to consummate the disposition in each such jurisdiction of such Registrable Notes owned by such Holder; *provided, however*, that the Company shall not be required to (i) qualify as a foreign corporation or entity or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d) or (ii) take any action which would subject it to general service of process or taxation in any such jurisdiction if it is not then so subject;

(e) in the case of a Shelf Registration, notify each Holder of Registrable Notes and counsel for such Holders promptly and, if requested by such Holder or counsel, confirm such advice in writing promptly

(i) when a Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective,

(ii) of any request by the SEC or any state securities authority for post-effective amendments or supplements to a Registration Statement or Prospectus or for additional information after a Registration Statement has become effective (other than comments to 1934 Act reports incorporated therein by reference),

(iii) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose,

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Notes for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose,

(v) of the happening of any event or the discovery of any facts during the period a Shelf Registration Statement is effective which is contemplated in Section 2(d)(i) or which makes any statement made in such Shelf Registration Statement or the related Prospectus untrue in any material respect or which constitutes an omission to state a material fact in such Shelf Registration Statement or Prospectus and

(vi) of any determination by the Company that a post-effective amendment to a Registration Statement would be appropriate. Without limitation to any other provisions of this Agreement, the Company agrees that this Section 3(e) shall also be applicable, *mutatis mutandis*, with respect to the Exchange Offer Registration Statement and the Prospectus included therein to the extent that such Prospectus is being used by Participating Broker-Dealers as contemplated by Section 3(f);

(f) (A) in the case of an Exchange Offer, (i) include in the Exchange Offer Registration Statement (1) a “Plan of Distribution” section covering the use of the Prospectus included in the Exchange Offer Registration Statement by broker-dealers who have exchanged their Registrable Notes for Exchange Notes for the resale of such Exchange Notes and (2) a statement to the effect that any such broker-dealers who wish to use the related Prospectus in connection with the resale of Exchange Notes acquired as a result of market-making or other trading activities will be required to notify the Company to that effect, together with instructions for giving such notice (which instructions shall include a provision for giving such notice by checking a box or making another appropriate notation on the related letter of transmittal) (each such broker-dealer who gives notice to the Company as aforesaid being hereinafter called a “Notifying Broker-Dealer”), (ii) furnish to each Notifying Broker-Dealer who desires to participate in the Exchange Offer, without charge, as many copies of each Prospectus included in the Exchange Offer Registration Statement, including any preliminary prospectus, and any amendment or supplement thereto, as such broker-dealer may reasonably request, (iii) include in the Exchange Offer Registration Statement a statement that any broker-dealer who holds Registrable Notes acquired for its own account as a result of market-making activities or other trading activities (a “Participating Broker-Dealer”), and who receives Exchange Notes for Registrable Notes pursuant to the Exchange Offer, may be a statutory underwriter and must deliver a prospectus meeting the requirements of the 1933 Act in connection with any resale of such Exchange Notes, (iv) subject to the penultimate paragraph of this Section 3, the Company hereby consents to the use of the Prospectus forming part of the Exchange Offer Registration Statement or any amendment or supplement thereto by any Notifying Broker-Dealer in accordance with applicable law in connection with the sale or transfer of Exchange Notes, and (v) include in the transmittal letter or similar documentation to be executed by an exchange offeree in order to participate in the Exchange Offer the following provision:

“If the undersigned is not a broker-dealer, the undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of Exchange Notes. If the undersigned is a broker-dealer that will receive Exchange Notes for its own account in exchange for Registrable Notes, it represents that the Registrable Notes to be exchanged for Exchange Notes were acquired by it as a result of market-making activities or other trading activities and acknowledges that it will deliver a prospectus meeting the requirements of the 1933 Act in connection with any resale of such Exchange Notes pursuant to the Exchange Offer; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an “underwriter” within the meaning of the 1933 Act;”

(B) to the extent any Notifying Broker-Dealer participates in the Exchange Offer, (i) the Company shall use its commercially reasonable efforts to maintain the effectiveness of the Exchange Offer Registration Statement for a period of 180 days (subject to extension pursuant to the last paragraph of this Section 3) following the last date on which exchanges are accepted pursuant to the Exchange Offer, and (ii) the Company will comply, insofar as relates to the Exchange Offer Registration Statement, the Prospectus included therein and the offering and sale of Exchange Notes pursuant thereto, with its obligations under Section 2(b)(D), the last paragraph of Section 2(b), Section 3(c), 3(d), 3(e), 3(g), 3(i), 3(j), 3(n), 3(o) and 3(p), and the last three paragraphs of this Section 3 as if all references therein to a Shelf Registration Statement, the Prospectus included therein and the Holders of Registrable Notes referred, mutatis mutandis, to the Exchange Offer Registration Statement, the Prospectus included therein and the applicable Notifying Broker-Dealers and, for purposes of this Section 3(f), all references in any such paragraphs or sections to the “Majority Holders” shall be deemed to mean, solely insofar as relates to this Section 3(f), the Notifying Broker-Dealers who are the Holders of the majority in aggregate principal amount of the Exchange Notes which are Registrable Notes; and

(C) the Company shall not be required to amend or supplement the Prospectus contained in the Exchange Offer Registration Statement as would otherwise be contemplated by Section 3(b) or 3(k) hereof, or take any other action as a result of this Section 3(f), for a period exceeding 180 days (subject to extension pursuant to the last paragraph of this Section 3) after the last date on which exchanges are accepted pursuant to the Exchange Offer and Notifying Broker-Dealers shall not be authorized by the Company to, and shall not, deliver such Prospectus after such period in connection with resales contemplated by this Section 3;

(g) in the case of a Shelf Registration, furnish counsel for the Holders of Registrable Notes copies of any request by the SEC or any state securities authority for amendments or supplements to a Registration Statement or Prospectus or for additional information (other than comments to 1934 Act reports incorporated therein by reference);

(h) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement as soon as practicable and provide immediate notice to each Holder of the withdrawal of any such order;

(i) in the case of a Shelf Registration, cooperate with the selling Holders of Registrable Notes to facilitate the timely preparation and delivery of certificates representing Registrable Notes to be sold and not bearing any restrictive legends; and cause such Registrable Notes to be in such denominations (consistent with the provisions of the Indenture) and in a form eligible for deposit with the Depository and registered in such names as the selling Holders may reasonably request in writing at least two Business Days prior to the closing of any sale of Registrable Notes;

(j) in the case of a Shelf Registration, upon the occurrence of any event or the discovery of any facts as contemplated by Section 3(e)(v) hereof, use its commercially reasonable efforts to prepare a supplement or post-effective amendment to a Registration Statement or the related Prospectus or any document incorporated or deemed to be incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Notes, such Prospectus will not contain at the time of such delivery any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Company agrees to notify each Holder to suspend use of the Prospectus as promptly as practicable after the occurrence of such an event, and each Holder hereby agrees to suspend use of the Prospectus until the Company has amended or supplemented the Prospectus to correct such misstatement or omission. At such time as such public disclosure is otherwise made or the Company determines that such disclosure is not necessary, in each case to correct any misstatement of a material fact or to include any omitted material fact, the Company agrees promptly to notify each Holder of such determination and to furnish each Holder such number of copies of the Prospectus, as amended or supplemented, as such Holder may reasonably request;

(k) obtain CUSIP and ISIN numbers for all Exchange Notes or Registrable Notes, as the case may be, not later than the effective date of a Registration Statement, and provide the Trustee with printed or word-processed certificates for the Exchange Notes or Registrable Notes, as the case may be, in a form eligible for deposit with the Depository;

(l) (i) cause the Indenture to be qualified under the TIA in connection with the registration of the Exchange Notes or Registrable Notes, as the case may be, (ii) cooperate with the Trustee and the Holders to effect such changes, if any, to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA and (iii) execute, and use its commercially reasonable efforts to cause the Trustee to execute, all documents as may be required to effect such changes, if any, and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(m) in the case of a Shelf Registration, upon request make available for inspection by representatives of the Holders of the Registrable Notes participating in any disposition pursuant to a Shelf Registration Statement and any one counsel or accountant retained by such Holders (with such inspection to occur at such time as mutually agreed between the Company and such Persons), all financial statements and other records, documents and properties of the Company reasonably requested by any such Persons, and cause the respective officers, directors, employees, and any other agents of the Company to supply all information reasonably requested by any such Persons in connection with a Shelf Registration Statement; provided, that any such Persons shall be required to execute a customary confidentiality agreement;

(n) in the case of a Shelf Registration, a reasonable time prior to filing any Shelf Registration Statement, any Prospectus forming a part thereof, any amendment to such Shelf Registration Statement or amendment or supplement to such Prospectus, provide copies of such document to the Holders of Registrable Notes and to counsel for any such Holders, and make such changes in any such document prior to the filing thereof as the Holders of Registrable Notes, or any of their counsel may reasonably request, and cause the representatives of the Company to be available for discussion of such documents as shall be reasonably requested by the Holders of Registrable Notes and shall not at any time make any filing of any such document of which such Holders or their counsel shall not have previously been advised and furnished a copy or to which such Holders or their counsel shall reasonably object within a reasonable time period;

(o) in the case of a Shelf Registration, use its commercially reasonable efforts to cause the Registrable Notes to be rated by the same rating agency that initially rated the Subordinated Notes, if so requested by the Majority Holders of Registrable Notes, unless the Registrable Notes are already so rated; otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the SEC and, with respect to each Registration Statement and each post-effective amendment, if any, thereto and each filing by the Company of an Annual Report on Form 10-K, make available to its security holders, as soon as reasonably practicable, an earnings statement covering at least twelve months which shall satisfy the provisions of Section 11(a) of the 1933 Act and Rule 158 thereunder; and



(p) cooperate and assist in any filings required to be made with FINRA.

In the case of a Shelf Registration Statement, the Company may (as a condition to such Holder's participation in the Shelf Registration) require each Holder of Registrable Notes to furnish to the Company such information regarding such Holder and the proposed distribution by such Holder of such Registrable Notes as the Company may from time to time reasonably request in writing and require such Holder to agree in writing to be bound by all provisions of this Agreement applicable to such Holder.

In the case of a Shelf Registration Statement, each Holder agrees and, in the event that any Participating Broker-Dealer is using the Prospectus included in the Exchange Offer Registration Statement in connection with the sale of Exchange Notes pursuant to Section 3(f), each such Participating Broker-Dealer agrees that, upon receipt of any notice from the Company of the happening of any event or the discovery of any facts of the kind described in Section 3(e)(ii), 3(e)(iii) or 3(e)(iv) through 3(e)(vi) hereof, such Holder or Participating Broker-Dealer, as the case may be, will forthwith discontinue disposition of Registrable Notes pursuant to a Registration Statement until receipt by such Holder or Participating Broker-Dealer, as the case may be, of (i) the copies of the supplemented or amended Prospectus contemplated by Section 3(j) hereof or (ii) written notice from the Company that the Shelf Registration Statement or the Exchange Offer Registration Statement, respectively, are once again effective or that no supplement or amendment is required. If so directed by the Company, such Holder or Participating Broker-Dealer, as the case may be, will deliver to the Company (at the Company's expense) all copies in its possession, other than permanent file copies then in its possession, of the Prospectus covering such Registrable Notes current at the time of receipt of such notice. Nothing in this paragraph shall prevent the accrual of Additional Interest on any Registrable Notes.

If the Company shall give any such notice to suspend the disposition of Registrable Notes pursuant to the immediately preceding paragraph, the Company shall be deemed to have used its commercially reasonable efforts to keep the Shelf Registration Statement or, in the case of Section 3(f), the Exchange Offer Registration Statement, as the case may be, effective during such period of suspension; *provided* that (i) such period of suspension shall not exceed the time periods provided in Section 2(d)(iii) hereof and (ii) the Company shall use its commercially reasonable efforts to file and have declared effective (if an amendment) as soon as practicable thereafter an amendment or supplement to the Shelf Registration Statement or the Exchange Offer Registration Statement or both, as the case may be, or the Prospectus included therein and shall extend the period during which the Shelf Registration Statement or the Exchange Offer Registration Statement or both, as the case may be, shall be maintained effective pursuant to this Agreement (and, if applicable, the period during which Participating Broker-Dealers may use the Prospectus included in the Exchange Offer Registration Statement pursuant to Section 3(f) hereof) by the number of days during the period from and including the date of the giving of such notice to and including the earlier of the date when the Holders or Participating Broker-Dealers, respectively, shall have received copies of the supplemented or amended Prospectus necessary to resume such dispositions and the effective date of written notice from the Company to the Holders or Participating Broker-Dealers, respectively, that the Shelf Registration Statement or the Exchange Offer Registration Statement, respectively, are once again effective or that no supplement or amendment is required.

#### **4. Indemnification and Contribution.**

(a) The Company agrees to indemnify and hold harmless each Holder, each Participating Broker-Dealer and each Person, if any, who controls any Holder or Participating Broker-Dealer within the meaning of either Section 15 of the 1933 Act or Section 20 of the 1934 Act, as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement (or any amendment thereto) pursuant to which Exchange Notes or Registrable Notes were registered under the 1933 Act, including all documents incorporated therein by reference, or any omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or Prospectus (or any amendment or supplement thereto) or any 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;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission described in subparagraph (i) above; *provided* that any such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including, subject to Section 4(c) below, the fees and disbursements of counsel chosen by any indemnified party), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission described in subparagraph (i) above, to the extent that any such expense is not paid under subparagraph (i) or (ii) above;

*provided, however*, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by any Holder or Participating Broker-Dealer with respect to such Holder, Participating Broker-Dealer, as the case may be, expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto).

(b) Each Holder, severally but not jointly, agrees to indemnify and hold harmless the Company, each director of the Company, each officer of the Company who signed the Registration Statement, each Participating Broker-Dealer and each other selling Holder and each Person, if any, who controls the Company, any Participating Broker-Dealer or any other selling Holder within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 4(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Shelf Registration Statement (or any amendment thereto) or any Prospectus included therein (or any amendment or supplement thereto) in reliance upon and in conformity with written information with respect to such Holder furnished to the Company by such Holder expressly for use in the Shelf Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto); *provided, however*, that no such Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Registrable Notes pursuant to such Shelf Registration Statement.

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. Counsel to the respective indemnified parties shall be selected as follows: (i) counsel to the Company, its directors, each of its officers who signed the Registration Statement and all Persons, if any, who control the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall be selected by the Company; (ii) counsel to the Holders (other than Participating Broker-Dealers) and all Persons, if any, who control any Holders (other than any Participating Broker-Dealers) within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall be selected by the Holders who held or hold, as the case may be, a majority in aggregate principal amount of the Registrable Notes held by all such Holders; and (iii) counsel to the Participating Broker-Dealers and all Persons, if any, who control any such Participating Broker-Dealer within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall be selected by the Participating Broker-Dealers who held or hold, as the case may be, a majority in aggregate principal amount of the Exchange Notes referred to in Section 3(f) hereof held by all such Participating Broker-Dealers. In no event shall the indemnifying party or parties be liable for (A) the fees and expenses of more than one counsel (in addition to any local counsel) separate from the indemnifying parties' own counsel for the Company and all other Persons referred to in clause (i) of this paragraph, (B) the fees and expenses of more than one counsel (in addition to any local counsel) separate from the indemnifying parties' own counsel for all Holders (other than Participating Broker-Dealers) and all other Persons referred to in clause (ii) of this paragraph, and (C) the fees and expenses of more than one counsel (in addition to any local counsel) separate from the indemnifying parties' own counsel for all Participating Broker-Dealers and all other Persons referred to in clause (iv) of this paragraph, in each case in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. The indemnifying party shall be entitled to participate therein and, to the extent that it shall elect, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, *provided, however*, 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 which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. After notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation unless (A) 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, approved by the indemnifying party) or (B) the indemnifying party shall not have employed counsel reasonably satisfactory to 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. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 4 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim 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.

(d) If the indemnification provided for in this Section 4 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations. The relative fault of such indemnifying party or parties on the one hand and the indemnified party or parties on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or parties or such indemnified party or parties, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company and the Holders agree that it would not be just or equitable if contribution pursuant to this Section 4 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 4 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 4, other than in the case of intentional misrepresentation or omission of a material fact, no Holder or Participating Broker-Dealer shall be required to contribute any amount in excess of the amount by which the total price at which Registrable Notes sold by it were offered exceeds the amount of any damages that such Holder or Participating Broker-Dealer has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 4, each Person, if any, who controls a Holder or Participating Broker-Dealer within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as such Holder or Participating Broker-Dealer, as the case may be, 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 Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company.

The respective obligations of the Holders and Participating Broker-Dealers to contribute pursuant to this Section 4 are several in proportion to the principal amount of Subordinated Notes purchased by them and not joint.

The indemnity and contribution provisions contained in this Section 4 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or Participating Broker-Dealer or any Person controlling any Holder or Participating Broker-Dealer, or by or on behalf of the Company, its officers or directors or any Person controlling the Company, (iii) acceptance of any of the Exchange Notes and (iv) any sale of Registrable Notes or Exchange Notes pursuant to a Shelf Registration Statement.

5. Miscellaneous.

(a) Rule 144 and Rule 144A. For so long as the Company is subject to the reporting requirements of Section 13 or 15 of the 1934 Act, the Company covenants that it will file all reports required to be filed by it under Section 13(a) or 15(d) of the 1934 Act and the rules and regulations adopted by the SEC thereunder, that if it ceases to be so required to file such reports, it will upon the request of any Holder or beneficial owner of Registrable Notes (i) make publicly available such information (including, without limitation, the information specified in Rule 144(c)(2) under the 1933 Act) as is necessary to permit sales pursuant to Rule 144 under the 1933 Act, (ii) deliver or cause to be delivered, promptly following a request by any Holder or beneficial owner of Registrable Notes or any prospective purchaser or transferee designated by such Holder or beneficial owner, such information (including, without limitation, the information specified in Rule 144A(d)(4) under the 1933 Act) as is necessary to permit sales pursuant to Rule 144A under the 1933 Act, and (iii) take such further action that is reasonable in the circumstances, in each case to the extent required from time to time to enable such Holder to sell its Registrable Notes without registration under the 1933 Act within the limitation of the exemptions provided by (x) Rule 144 under the 1933 Act, as such Rule may be amended from time to time, (y) Rule 144A under the 1933 Act, as such Rule may be amended from time to time, or (z) any similar rules or regulations hereafter adopted by the SEC. Upon the request of any Holder or beneficial owner of Registrable Notes, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

(b) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of at least a majority in aggregate principal amount of the outstanding Registrable Notes affected by such amendment, modification, supplement, waiver or departure.

(c) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, electronic mail, or any courier guaranteeing overnight delivery (i) if to a Holder or Participating Broker-Dealer at the most current address set forth on the records of the registrar under the Indenture, and (ii) if to the Company, initially at the address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 5(c).

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged, if sent via electronic mail; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery.

Copies of all such notices, demands or other communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture.

(d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Notes in violation of the terms hereof or of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Notes, in any manner, whether by operation of law or otherwise, such Registrable Notes shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Notes, such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement, including the restrictions on resale set forth in this Agreement and, if applicable, the Purchase Agreement, and such Person shall be entitled to receive the benefits hereof.

(e) Third Party Beneficiary. Each Holder and Participating Broker-Dealer shall be a third party beneficiary of the agreements made hereunder and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of other Holders hereunder. Each Holder, by its acquisition of Subordinated Notes, shall be deemed to have agreed to the provisions of Section 4 hereof.

(f) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) Restriction on Resales. If the Company or any of its subsidiaries or affiliates (as defined in Rule 144 under the 1933 Act) shall redeem, purchase or otherwise acquire any Registrable Security or any Exchange Security which is a “restricted security” within the meaning of Rule 144 under the 1933 Act, the Company will deliver or cause to be delivered such Registrable Security or Exchange Security, as the case may be, to the Trustee for cancellation and neither the Company nor any of its subsidiaries or affiliates will hold or resell such Registrable Security or Exchange Security or issue any new Security or Exchange Security to replace the same.

(i) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(j) Entire Agreement; Severability. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect hereto. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Company has caused this Registration Rights Agreement to be executed by its duly authorized representative as of the date first above written.

**COMPANY:**

**MIDLAND STATES BANCORP, INC.**

By: \_\_\_\_\_  
Jeffrey G. Ludwig  
Chief Executive Officer and President

*[Signature page to Registration Rights Agreement]*

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**IN WITNESS WHEREOF**, each Purchaser has caused this Registration Agreement to be executed by its duly authorized representative as of the date first above written.

**PURCHASERS:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name:  
Title:

*[Signature page to Registration Rights Agreement]*

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### Midland States Bancorp, Inc. Announces Issuance of \$100 Million in Subordinated Notes

**Effingham, IL, September 20, 2019** – Midland States Bancorp, Inc. (NASDAQ: MSBI) (the “Company” or “Midland”) announced today the issuance of \$100 million aggregate principal amount of fixed-to-floating rate subordinated notes (the “Notes”), consisting of \$72.75 million of 10-year notes (the “10-Year Notes”) and \$27.25 million of 15-year notes (the “15-Year Notes”) in a private placement transaction. The proceeds from the issuance will be used to repay a \$30.0 million term loan, redeem \$40.3 million of subordinated debt on or after the date that debt first becomes callable on June 18, 2020, and for general corporate purposes.

The 10-year Notes have an initial fixed rate of 5.00% per annum, mature on September 30, 2029, and become callable September 30, 2024. The 15-year Notes have an initial fixed rate of 5.50% per annum, mature September 30, 2034, and become callable beginning September 30, 2029.

“We are pleased to take advantage of attractive pricing in the fixed income markets to raise funding to repay our senior debt and be in a position to refinance much of our subordinated debt with less expensive and longer-term funds,” said Jeffrey G. Ludwig, President and Chief Executive Officer of Midland. “This funding also provides us with additional flexibility to continue executing on our organic and acquisitive growth strategies.”

Sandler O’Neill + Partners, L.P. acted as the sole placement agent for the Notes.

#### About Midland States Bancorp, Inc.

Midland States Bancorp, Inc. is a community-based financial holding company headquartered in Effingham, Illinois, and is the sole shareholder of Midland States Bank. As of June 30, 2019, the Company had total assets of approximately \$5.55 billion and its Wealth Management Group had assets under administration of approximately \$3.13 billion. Midland provides a full range of commercial and consumer banking products and services, business equipment financing, merchant credit card services, trust and investment management, and insurance and financial planning services. In addition, multi-family and healthcare facility FHA financing is provided through Love Funding, Midland’s non-bank subsidiary. For additional information, visit <https://www.midlandsb.com/> or follow Midland on LinkedIn at <https://www.linkedin.com/company/midland-states-bank>.

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## **Forward-Looking Statements**

Readers should note that in addition to the historical information contained herein, this press release includes "forward-looking statements" within the meanings of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including but not limited to statements about the Company's financing and use of proceeds from the notes offering. These statements are subject to many risks and uncertainties, including changes in interest rates and other general economic, business and political conditions, including changes in the financial markets; changes in business plans as circumstances warrant; risks relating to acquisitions; and other risks detailed from time to time in filings made by the Company with the Securities and Exchange Commission. Readers should note that the forward-looking statements included in this press release are not a guarantee of future events, and that actual events may differ materially from those made in or suggested by the forward-looking statements. Forward-looking statements generally can be identified by the use of forward-looking terminology such as "will," "propose," "may," "plan," "seek," "expect," "intend," "estimate," "anticipate," "believe" or "continue," or similar terminology. Any forward-looking statements presented herein are made only as of the date of this press release, and the Company does not undertake any obligation to update or revise any forward-looking statements to reflect changes in assumptions, the occurrence of unanticipated events, or otherwise.

###

## **CONTACTS:**

Douglas J. Tucker, Sr. V.P., Corporate Counsel, at [dtucker@midlandsb.com](mailto:dtucker@midlandsb.com) or (217) 342-7321

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Confidential

# Midland States Bancorp, Inc. NASDAQ: MSBI

Investor Presentation  
Subordinated Debt Offering  
September 2019





**Forward-Looking Statements.** This presentation may contain forward-looking statements within the meaning of the federal securities laws. Forward-looking statements express management's current expectations, forecasts of future events or long-term goals, including with respect to acquisitions, and may be based upon beliefs, expectations and assumptions of Midland's management, are generally identifiable by the use of words such as "believe," "expect," "anticipate," "plan," "intend," "estimate," "may," "will," "would," "could," "should" or other similar expressions. All statements in this presentation speak only as of the date they are made, and Midland undertakes no obligation to update any statement. A number of factors, many of which are beyond the ability of Midland to control or predict, could cause actual results to differ materially from those in its forward-looking statements. These risks and uncertainties should be considered in evaluating forward-looking statements and undue reliance should not be placed on such statements. Additional information concerning Midland and its respective businesses, including additional factors that could materially affect Midland's financial results, are included in Midland's filings with the Securities and Exchange Commission.

**Use of Non-GAAP Financial Measures.** This presentation may contain certain financial information determined by methods other than in accordance with accounting principles generally accepted in the United States ("GAAP"). These non-GAAP financial measures include "Adjusted Earnings," "Adjusted Diluted Earnings Per Share," "Adjusted Return on Average Assets," "Adjusted Return on Average Tangible Common Equity," "Tangible Common Equity to Tangible Assets," and "Tangible Book Value Per Share." The Company believes that these non-GAAP financial measures provide both management and investors a more complete understanding of the Company's funding profile and profitability. These non-GAAP financial measures are supplemental and are not a substitute for any analysis based on GAAP financial measures. Not all companies use the same calculation of these measures; therefore this presentation may not be comparable to other similarly titled measures as presented by other companies. Reconciliations of these non-GAAP measures are provided in the Appendix section of this presentation.



# Terms of Planned Capital Raise:

## 10 Year – Non Call 5 Year

Issuer	Midland States Bancorp, Inc.
Security	Subordinated Notes
Type	Private Placement with Registration Rights
Expected Ratings	Kroll BBB-
Maturity Date	[•] 2029
Interest Payments	Semi-annually on [•] and [•] of each year through [•], 2024, and thereafter on [•], [•], [•], and [•] of each year through the maturity date or early redemption date
Optional Redemption	Redeemable at 100% of principal amount, plus accrued and unpaid interest beginning on [•] 2024
Principal Amount	[XXXX]
Use of Proceeds	The Company intends to use the proceeds from the offering to repay a \$30.0 million term loan, redeem \$40.3 million of subordinated debt callable June 18, 2020, and for general corporate purposes
Placement Agent	Sandler O'Neill + Partners, L.P.



# Terms of Planned Capital Raise:

## 15 Year – Non Call 10 Year

Issuer	Midland States Bancorp, Inc.
Security	Subordinated Notes
Type	Private Placement with Registration Rights
Expected Ratings	Kroll BBB-
Maturity Date	[•] 2034
Interest Payments	Semi-annually on [•] and [•] of each year through [•], 2029, and thereafter on [•], [•], [•], and [•] of each year through the maturity date or early redemption date
Optional Redemption	Redeemable at 100% of principal amount, plus accrued and unpaid interest beginning on [•] 2029
Principal Amount	[XXXX]
Use of Proceeds	The Company intends to use the proceeds from the offering to repay a \$30.0 million term loan, redeem \$40.3 million of subordinated debt callable June 18, 2020, and for general corporate purposes
Placement Agent	Sandler O'Neill + Partners, L.P.



# Overview of Midland States Bancorp, Inc.

## Company Overview and Highlights

- \$5.55 billion asset community bank established in 1881 and headquartered in Effingham, Illinois (3rd largest Illinois-based community bank<sup>2</sup>)
- \$3.13 billion AUA Wealth Management business
- Strong fee generators consistently account for approximately 30% of total revenue
- 90+ offices throughout the U.S. including 74 traditional branches in Illinois and Missouri
- 14 successful acquisitions since 2008
- July 2019 acquisition of HomeStar Bank expands presence in Kankakee, Illinois and adds low-cost deposit base

## Principal Lines of Businesses

### Community Banking

Consumer and Commercial Banking

### Wealth Management

Assets Under Administration: \$3.1bn

### Midland Equipment Finance

Equipment Finance Business

### Love Funding

Commercial FHA Loan Origination and Servicing

#### Notes:

(1) Excludes performing TDRs

(2) Community bank defined as banks with less than \$10 billion in assets

(3) Non-GAAP financial measures. Refer to Appendix for a reconciliation to the comparable GAAP financial measures

Note: Texas Ratio calculated as (NPAs Excl. performing TDRs and 90+ Days Past Due) / (Tangible Common Equity + Loan Loss Reserves)

Source: S&P Global Market Intelligence; Financial data as of June 30, 2019

## Financial Highlights

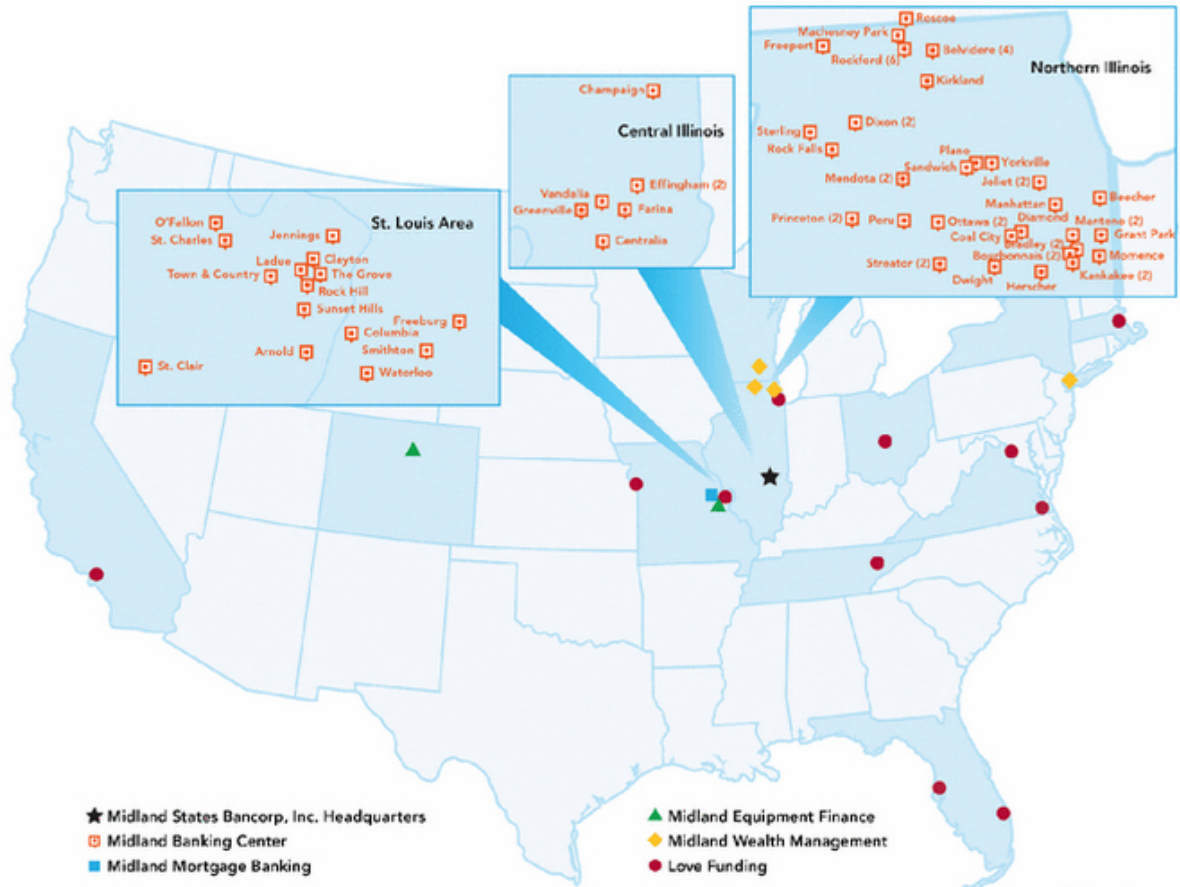
Dollars in millions, apart from per share data

	2015	2016	2017	2018	2Q19 YTD
<b>Balance Sheet</b>					
Total Assets	\$2,885	\$3,234	\$4,413	\$5,638	\$5,546
Total Net Loans	\$1,980	\$2,305	\$3,210	\$4,117	\$4,047
Total Deposits	\$2,368	\$2,404	\$3,131	\$4,074	\$4,011
Total Equity	\$233	\$322	\$450	\$609	\$640
Tangible Common Equity	\$179	\$266	\$331	\$404	\$439
<b>Capital Position</b>					
TCE / TA <sup>3</sup>	6.3%	8.4%	7.7%	7.4%	8.2%
Leverage Ratio	7.5%	9.8%	8.6%	8.5%	9.3%
Tier 1 Common Ratio	6.5%	9.4%	8.5%	8.8%	9.4%
Tier 1 Ratio	8.6%	11.3%	10.2%	10.3%	10.9%
Total Capital Ratio	11.8%	13.9%	13.3%	12.8%	13.5%
<b>Profitability</b>					
ROAA	0.88%	1.03%	0.41%	0.72%	1.09%
ROATCE <sup>3</sup>	14.1%	13.4%	5.2%	10.4%	14.6%
Net Income	\$24.3	\$31.5	\$16.1	\$39.4	\$30.3
Diluted EPS	\$2.00	\$2.17	\$0.87	\$1.66	\$1.24
Loans / Deposits	84.3%	96.5%	103.1%	101.6%	101.6%
Cost of Deposits	0.33%	0.38%	0.42%	0.55%	0.84%
Yield on Loans	5.21%	4.85%	4.85%	5.06%	5.27%
Net Interest Margin	4.38%	3.92%	3.77%	3.76%	3.75%
Efficiency Ratio <sup>3</sup>	66.2%	68.7%	66.7%	66.1%	63.1%
<b>Asset Quality</b>					
NPAs <sup>1</sup> / Assets	0.83%	0.69%	0.64%	0.75%	0.92%
Texas Ratio	11.7%	7.1%	7.3%	9.7%	10.9%

**Midland**  
States Bancorp, Inc.



# Financial Services and Banking Center Footprint



Residential Mortgage and Wealth Management services are also available through all Midland Banking Centers.





# Investment Summary

- Experienced and deep management team
- Consistent track record of driving shareholder returns through disciplined strategic expansion and earnings growth
- Solid asset quality with low charge-off history driven by a diversified loan portfolio, conservative credit culture and disciplined underwriting process
- Stable core deposit franchise with 22% non-interest bearing accounts<sup>(1)</sup>
- Proven track record of successful acquisitions with a focus on enhancing shareholder value while building a platform for scalability
- Illinois and contiguous states provide opportunities for future acquisitions
- Comprehensive risk management standards applied throughout the entire business





# Business and Corporate Strategy

## Five Core Strategic Initiatives

### Customer-Centric Culture

Drive organic growth by focusing on customer service and accountability to Midland's clients and colleagues; seek to develop bankers who create dynamic relationships; pursue continual investment in people; maintain a core set of institutional values

### Operational Excellence

A corporate-wide focus on driving improvements in people, processes and technology in order to generate further improvement in Midland's operating efficiency and financial performance

### Enterprise-Wide Risk Management

Maintain a program designed to integrate controls, monitoring and risk-assessment at all key levels and stages of operations and growth; ensure that all employees are fully engaged

### Accretive Acquisitions

Maintain experienced acquisition team capable of identifying and executing transactions that build shareholder value through a disciplined approach to pricing; take advantage of relative strength in periods of market disruption

### Revenue Diversification

Generate a diversified revenue mix and focus on growing businesses that generate strong recurring revenues such as wealth management



# Experienced Leadership Team

## Highly experienced senior management in place:



**John M. Schultz:** Chairman of the Board

- Held the position since 2006
- Chief Executive Officer of Agracel, Inc.
- Author of *Boomtown USA: the 7 ½ Keys to Big Success in Small Towns*



**Jeffrey G. Ludwig:** President and CEO of Midland States Bancorp

- Assumed Company CEO role in Jan. 2019 after serving as Bank CEO
- More than 10 years serving as CFO
- Joined Midland States in November 2006; 16+ years in banking industry



**Jeffrey S. Mefford:** President of Midland States Bank and EVP of Midland States Bancorp

- 25+ years in community banking
- Appointed Bank President in March 2018
- Oversees commercial, retail, mortgage and treasury sales



**Douglas J. Tucker:** SVP, Corporate Counsel and Director of IR

- 19+ years experience advising banks and bank holding co.
- Significant IPO, SEC reporting and M&A experience
- Served as lead outside counsel for all of Midland's acquisitions and capital raise transactions from 2007 prior to joining the Company



**Donald J. Spring:** Chief Accounting Officer

- Promoted to Chief Accounting Officer in 2019
- Joined Midland States in 2009 as Corporate Controller
- 35+ years of financial accounting and reporting experience; primarily in the banking industry



**Jeffrey A. Brunoehler:** Chief Credit Officer

- 30+ years in banking, lending and credit
- Leads the credit underwriting, approval and loan portfolio management functions
- Joined Midland in 2010

- MSBI common shares are 6.7% <sup>(1)</sup> owned by the Board of Directors and executive officers

### Notes:

(1) As of June 30, 2019; beneficial ownership includes shares of unvested restricted stock that officers are entitled to vote, but does not include common stock equivalent units owned by directors or officers under the Deferred Compensation Plan





# Midland States Board of Directors

Name	Background
<p><i>John M. Schultz</i> <i>Chairman of the Board</i></p>	<ul style="list-style-type: none"> <li>Mr. Schultz has served as the Chairman of the Company since 1986. Since 1986, Mr. Schultz has served as the Chief Executive Officer of Agracel, Inc., and is the author of BoomtownUSA: The 7 1/2 Keys to Big Success in Small Towns. He also serves on the Board of Trustees of Monmouth College and Altorfer Inc., and is the past President of the Illinois State Universities Retirement System. Mr. Schultz received his B.S. in Entrepreneurism from Southern Methodist University and his M.B.A. from Harvard Business School.</li> </ul>
<p><i>Jeffrey G. Ludwig</i> <i>President and CEO</i></p>	<ul style="list-style-type: none"> <li>Mr. Ludwig, CPA (inactive status), serves as President and Chief Executive Officer of the Company and Chief Executive Officer of the Bank. Mr. Ludwig was named President of the Company and Chief Executive Officer of the Bank in March 2018. On January 1, 2019, Mr. Ludwig was appointed as Chief Executive Officer of the Company. He serves on the Company's Executive Committee and Capital Management and Mergers and Acquisitions Committee and chairs its Asset/Liability Committee. Prior to joining the Company, Mr. Ludwig held positions at Zimmer Holdings, Inc., Novellus Systems, Inc., and KPMG LLP. Mr. Ludwig received his B.S. in Accounting from Eastern Illinois University.</li> </ul>
<p><i>Leon J. Holschbach</i> <i>Vice Chairman of the Board</i></p>	<ul style="list-style-type: none"> <li>Mr. Holschbach serves as the Vice Chairman of the Company and Vice Chairman of the Bank. From August 2007 to December 2018, he served as Chief Executive Officer of the Company. Prior to August 2007, Mr. Holschbach held the positions at AMCORE Bank, N.A. and Citizen's State Bank in Clinton, Wisconsin. Mr. Holschbach received his B.A. in Economics from the University of Wisconsin.</li> </ul>
<p><i>Jeffrey C. Smith</i> <i>Chairman, Midland States Bank</i></p>	<ul style="list-style-type: none"> <li>Mr. Smith has served on the boards of the holding company and the Bank since 2005 and was elected Chairman of the Bank in 2017. Mr. Smith serves as the Principal and Managing Partner of Walters Golf Management, a golf club management company headquartered in St. Louis, Missouri, which currently manages fifteen properties and offers turn key management, construction management, acquisition, consulting, agronomics and remodeling/redecorating services. Mr. Smith received his B.S. in Education from the University of Missouri.</li> </ul>
<p><i>Richard T. Ramos</i> <i>Director</i></p>	<ul style="list-style-type: none"> <li>Mr. Ramos is Executive Vice President, Chief Financial Officer and board member for Maritz Holdings, Inc. Prior to joining Maritz, Mr. Ramos served as Chief Financial Officer for Purcell Tire and Rubber Company, practiced corporate law at the firm of Blumenfeld, Kaplan and Sandweiss, and was a senior manager at KPMG LLP. He received his B.S. in Business Administration from the University of Missouri in St. Louis and his J.D. from St. Louis University School of Law. Mr. Ramos is a Certified Public Accountant and a member of the Missouri Bar.</li> </ul>



# Midland States Board of Directors (Continued)

Name	Background
<p><i>Deborah A. Golden</i> Director</p>	<ul style="list-style-type: none"> <li>Ms. Golden joined the Company's board in November 2015. She serves as Executive Vice President, General Counsel and Secretary of GATX Corporation. She previously served as General Counsel of Midwest Generation, LLC. Ms. Golden holds a B.A. from Boston College, a J.D. from Loyola University School of Law and an M.B.A. from Loyola University. She is a member of the Illinois Bar.</li> </ul>
<p><i>Robert F. Schultz</i> Director</p>	<ul style="list-style-type: none"> <li>Mr. Schultz serves as Managing Partner of the J.M. Schultz Investment, L.L.C. Since 1996, he has served as Chairman of AKRA Builders Inc. Prior to joining the Company's board of directors, he served on the board of directors of Prime Banc Corp. and First National Bank of Dieterich. Mr. Schultz received his B.S. in Finance from the University of Illinois and a J.D. from the University of Notre Dame Law School. He is the brother of John M. Schultz.</li> </ul>
<p><i>Jerry L. McDaniel</i> Director</p>	<ul style="list-style-type: none"> <li>Mr. McDaniel is President of Superior Fuels, Inc., and President of Dirtbuster Carwash LLC. Mr. McDaniel is also a principal in other businesses, including real estate development. Mr. McDaniel is a licensed pilot and serves on the board of the Southeastern Illinois Community Foundation. Prior to joining our board, Mr. McDaniel served as a director of another local community bank.</li> </ul>
<p><i>Dwight A. Miller</i> Director</p>	<ul style="list-style-type: none"> <li>Mr. Miller is the Chief Executive Officer and Owner of Dash Management. Mr. Miller has served in a number of management positions with McDonald's Corp., including NE Zone Franchising Manager, McOpCo Operation Manager and Field Service Manager. Mr. Miller also serves as President of the Greater Chicago Region-Regional Leadership Council and currently serves on the National Leadership Committee, and is on the Board of Trustees for the University of Findlay. He holds a B.S. in Accounting from Findlay College.</li> </ul>
<p><i>Jeffrey M. McDonnell</i> Director</p>	<ul style="list-style-type: none"> <li>Mr. McDonnell is Chief Executive Officer of JandJ Management Services, Inc. He also serves on the boards of KETC and The Center for Emerging Technologies. Mr. McDonnell also serves on the investment advisory committees Oakwood Medical and Rivervest. Mr. McDonnell holds a B.A. in economics from Princeton University, an M.B.A. from the University of Michigan and a certification as a Chartered Financial Analyst.</li> </ul>
<p><i>Jennifer L. DiMotta</i> Director</p>	<ul style="list-style-type: none"> <li>Mrs. DiMotta is the Executive Vice President and Chief Marketing Officer of MediaMarktSaturn; one of Europe's largest consumer electronics retailers. Prior to joining MediaMarktSaturn in 2019, she was the President of DiMotta Consulting LLC. Mrs. DiMotta served as Vice President Digital and Omnichannel of Bluemercury Inc., as Vice President eCommerce of Sports Authority, Inc., and as Senior Director of eCommerce of Office Depot. Mrs. DiMotta holds a B.A. in Criminal Justice from the University of Nebraska, and a Master's Degree in Leadership from the Bellevue University.</li> </ul>



# Successful Acquisition History

- Midland States has completed 14 transactions since 2008, including FDIC-assisted, branch, whole bank, asset purchase and business line acquisitions, and a New York trust asset acquisition
- Demonstrated history of earnings expansion
- Deliberate diversification of geographies and revenue channels
- Successful post-closing integration of systems and businesses

## Selected Acquisitions

	2009	2010	2014	2016	2017	2018	2019
	<b>Strategic Capital Bank</b>	<b>AMCORE Bank, N.A.</b>	<b>Love Savings / Heartland Bank</b>	<b>Sterling Bancorp</b>	<b>Centrue Financial</b>	<b>Alpine Bancorp.</b>	<b>HomeStar Financial</b>
Acquisition Type	FDIC-Assisted	12 Branches	Whole Bank	Trust Administration	Whole Bank	Whole Bank and Wealth Mgmt	Whole Bank
Assets Acquired (\$mm)	\$540.4	\$499.5	\$889.0	-	\$990.2	\$1,243.3	\$374.4 <sup>1</sup>
Location	Champaign, IL	Northern Illinois	St. Louis, MO	Yonkers, NY	Northern Illinois	Rockford, IL	Kankakee, IL
	Financially Transformative	Operationally Transformative	Revenue Diversification	Expansion of Trust Business	Enhanced Scale and Market Presence	Expanded Core Bank and Wealth Management	Low-cost deposit franchise and Market Presence

**Notes:**

(1) The Company is in the process of determining the estimated acquisition date fair values for identifiable assets acquired and liabilities assumed



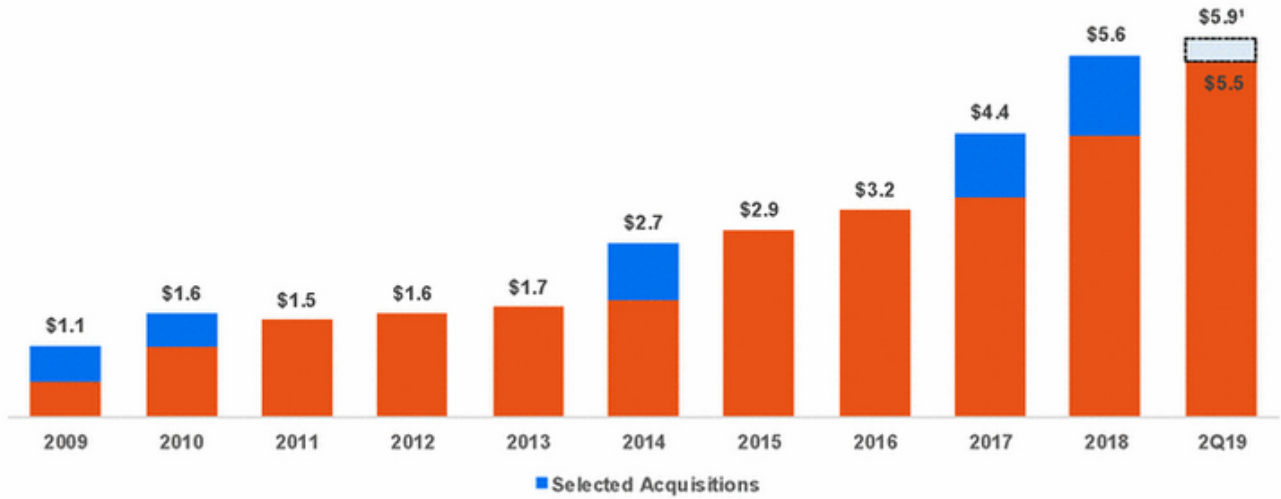
# Successful Execution of Strategic Plan...

## Total Assets

(at period-end in Billions)

CAGR with Acquisitions: 19%

CAGR Excluding Assets from Acquisitions: 10%



### Selected Acquisitions: Total Assets at Time of Acquisition (in millions)

2009: Strategic Capital Bank (\$540)	2010: AMCORE Bank (\$500)
2014: Love Savings/Heartland Bank (\$889)	2017: Centru Financial (\$990)
2018: Alpine Bancorp. (\$1,243)	2019: HomeStar Financial (\$374)

**Notes:**  
 (1) Represents 2Q19 pro forma with HomeStar



# ...Leads to Creation of Shareholder Value

10%+ annual dividend growth over the past 15 years

### Tangible Book Value Per Share<sup>(1)</sup>

(at period-end)



### Dividends Declared Per Share



**Notes:**

(1) Tangible book value per share is a non-GAAP financial measure; tangible book value per share is defined as tangible common equity divided by shares of common stock outstanding (in the case of the "as converted" measure, assuming the conversion of all preferred shares that were outstanding prior to December 31, 2014); refer to reconciliation in the Appendix





# Overview of HomeStar Bank Acquisition

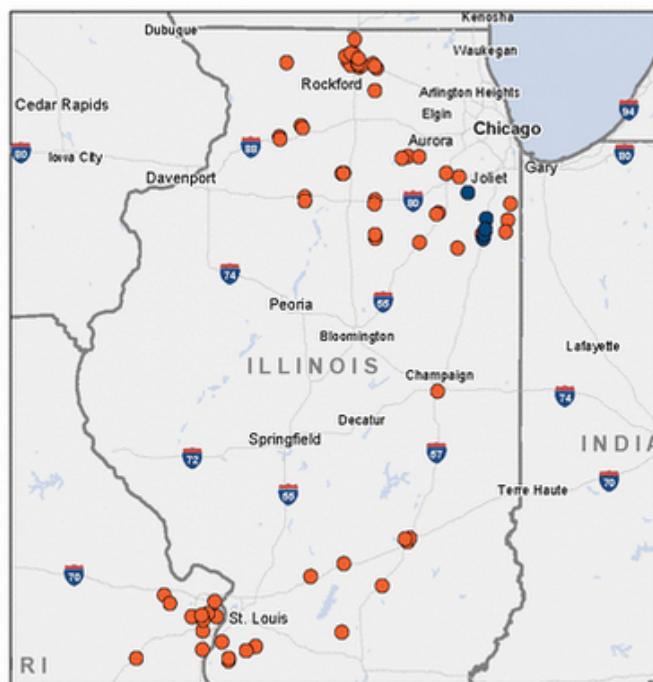
## Key Highlights<sup>(1)</sup>

- Closed in July 2019
- Complements Midland's franchise in Kankakee
  - Provides #1 deposit market share in Kankakee, IL MSA
- Stable, low-cost deposit franchise
  - 20 bps weighted average cost of deposits
  - 1.3% deposit beta (3Q15-4Q18)
- Highly accretive transaction with significant opportunities to realize cost savings
- Small, in-market acquisition with ease of integration and little to no disruption to efficiency initiatives

## Financial Impact<sup>(1)</sup>

- Approx. 9% EPS accretion estimated in 2020 (first full year of cost savings)
- TBV per share dilution of 2 years (crossover method)
- Adds \$223 million in total loans
- Adds \$333 million in total deposits
- Provides more than \$100 million in excess liquidity

## Combined Branch Map



● Midland States Bancorp, Inc.

● HomeStar Financial Group, Inc.

**Notes:**

(1) All data as of or for the three months ended December 31, 2018

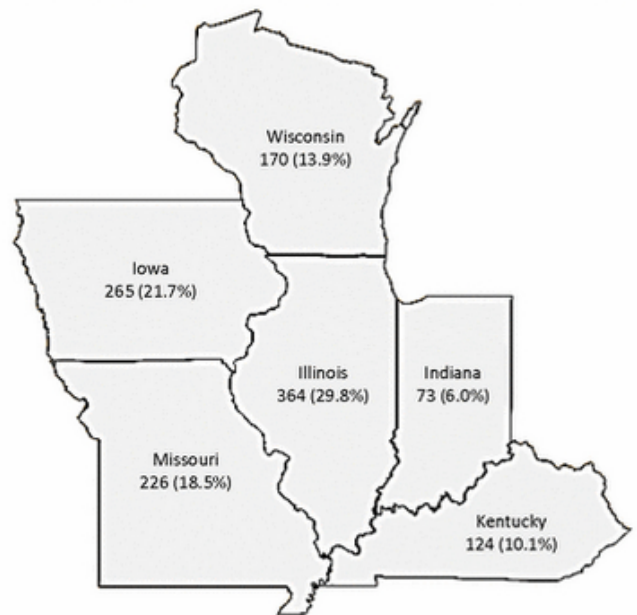




# Market Opportunities and Acquisition Strategy

- MSBI believes there will be numerous small to midsized banking organizations available for acquisition within Illinois and contiguous states
- There are more than 1,200 institutions in the six-state region with less than \$1.0 billion in assets <sup>(1)</sup>
  - Illinois and Missouri combine for nearly half of those institutions
- MSBI targets institutions with demographics similar to current markets that are strategically compelling and financially accretive
- Remain a community bank focused on customer service

Number of Banks and Thrifts  
With less than \$1.0 Billion in Assets <sup>(1)</sup>



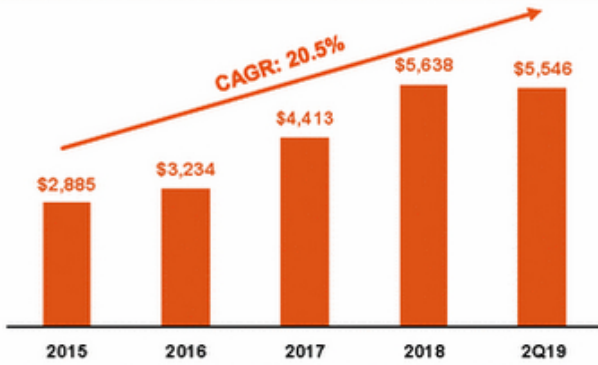
Be a “partner of choice” for community banks  
with scale and/or succession challenges

**Notes:**  
(1) Based on December 31, 2018 financial data  
Source: S&P Global Market Intelligence

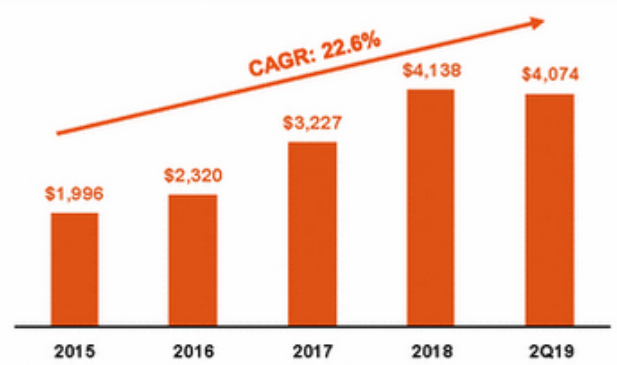


# Balance Sheet Growth Trends

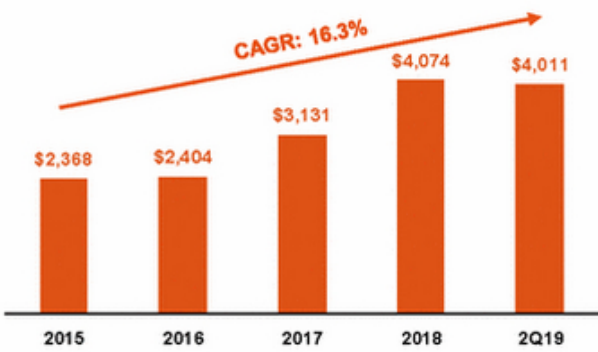
### Total Assets (\$mm)



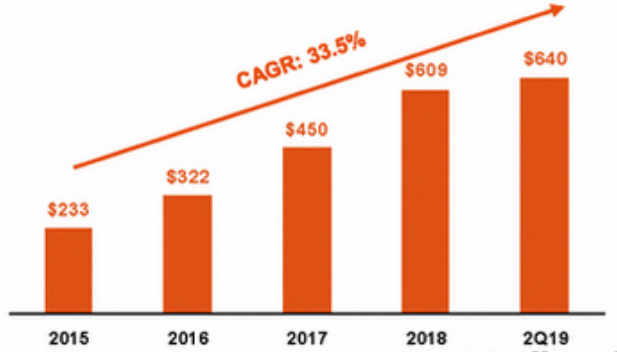
### Total Gross Loans (\$mm)



### Total Deposits (\$mm)



### Total Equity (\$mm)



Notes:  
Source: S&P Global Market Intelligence



# Loan Portfolio Overview

- Broadly diversified loan portfolio by type of customer and loan type
- 66% of portfolio is fixed; 34% is floating
- Focus on growing Equipment Finance portfolio that provides superior risk-adjusted yields
- Portfolio is 72% Commercial Loans and 28% Consumer Loans as of 2Q19

## Equipment Finance Portfolio

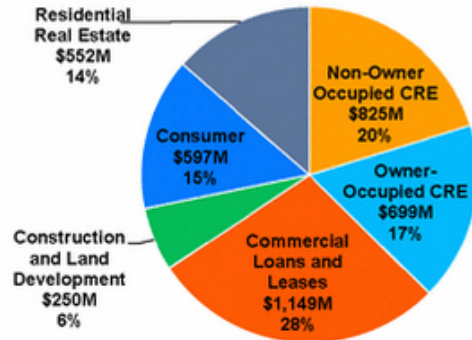
(dollars in millions)



Notes:

Source: S&P Global Market Intelligence; Financial data as of June 30, 2019

## Loan Portfolio Mix



\$4.07 Billion Gross HFI Loans  
5.27% Yield (2Q19 YTD)

## Commercial vs Consumer Loans

(dollars in millions)

	2Q19	% of Total
Commercial Loans & Leases	\$1,149	28%
Commercial Real Estate	\$1,524	37%
Construction and Land Development	\$250	6%
<b>Total Commercial</b>	<b>\$2,924</b>	<b>72%</b>
Residential Real Estate	\$552	14%
Consumer	\$597	15%
<b>Total Consumer</b>	<b>\$1,149</b>	<b>28%</b>
<b>Total Loans</b>	<b>\$4,074</b>	<b>100%</b>



# Largest Lending Relationships

*(dollars in thousands)*

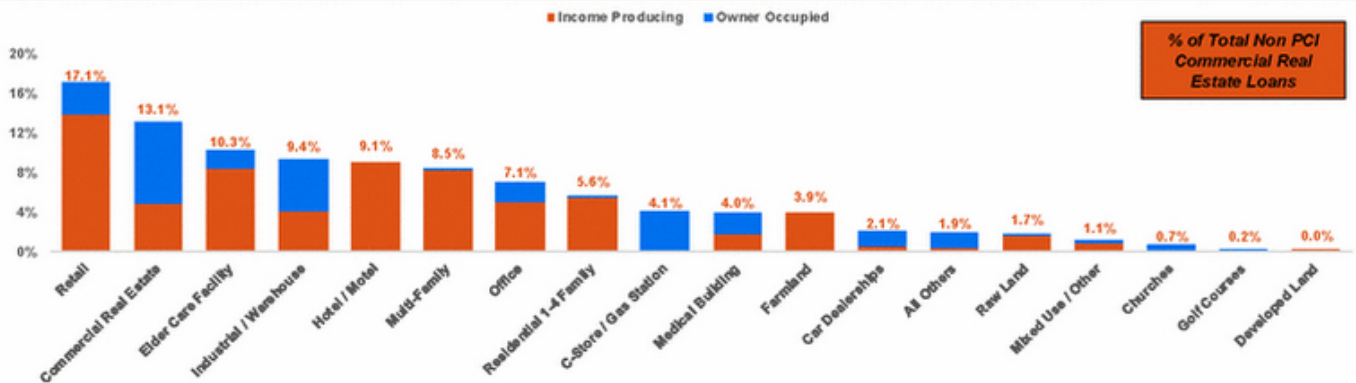
Borrower	Relationship Commitment	Relationship Balance	Loan Commitment % of Total Loans	# of Accounts	Industry
Borrower (1)	28,911	28,861	0.71%	11	Municipal & Term financing
Borrower (2)	28,519	28,506	0.70	35	Retail Stores
Borrower (3)	25,854	25,846	0.63	10	Hotel
Borrower (4)	24,982	23,251	0.61	6	Industrial/Ag RE
Borrower (5)	30,823	20,823	0.76	6	Dixon hospital
Borrower (6)	21,109	20,577	0.52	20	Manufacturing Company
Borrower (7)	21,147	20,297	0.52	34	Gas station
Borrower (8)	17,871	17,871	0.44	3	Fitness Club
Borrower (9)	16,446	16,446	0.40	9	Building product supplier
Borrower (10)	15,606	15,606	0.38	3	Supply Company
Borrower (11)	14,946	14,934	0.37	5	Hotel
Borrower (12)	16,106	14,384	0.40	12	Car dealer
Borrower (13)	14,261	14,261	0.35	7	New vehicle franchise
Borrower (14)	15,280	14,085	0.38	8	Auto Dealership
Borrower (15)	13,664	13,497	0.34	9	Hotel
Borrower (16)	13,445	13,445	0.33	1	Multi-family apartments
Borrower (17)	15,436	13,375	0.38	1	Senior Living facility
Borrower (18)	13,263	13,263	0.33	1	Assisted Living
Borrower (19)	15,363	13,209	0.38	9	Manufacturing Company
Borrower (20)	12,861	12,861	0.32	1	Community retail center
<b>Total</b>	<b>\$375,893</b>	<b>\$355,398</b>	<b>9.23%</b>	<b>191</b>	

Notes:  
As of June 30, 2019



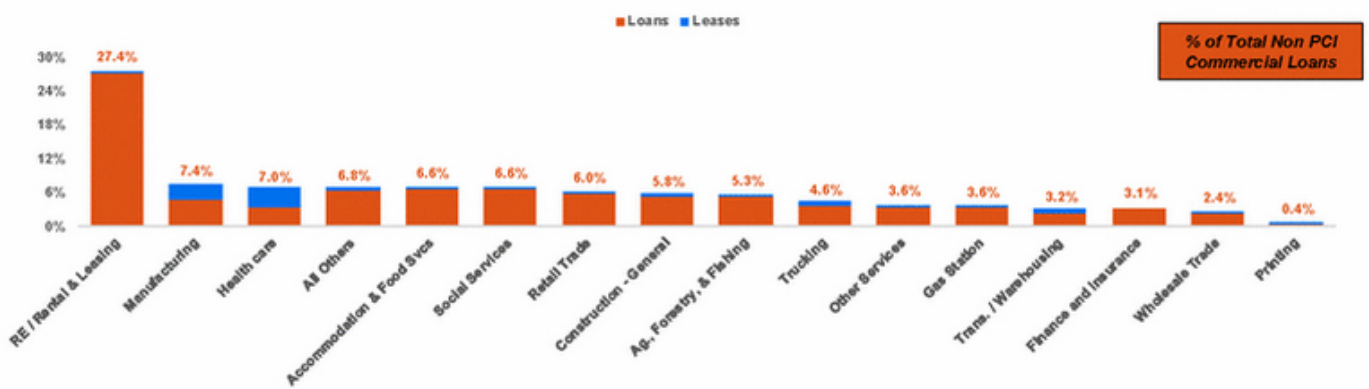
# Commercial Loans: Collateral and Industry Concentrations

## 2Q19 Commercial Real Estate Portfolio by Collateral (Excludes PCI Loans)



% of Total Non PCI Commercial Real Estate Loans

## 2Q19 Total Commercial Portfolio by Borrower Industry (Excludes PCI Loans)



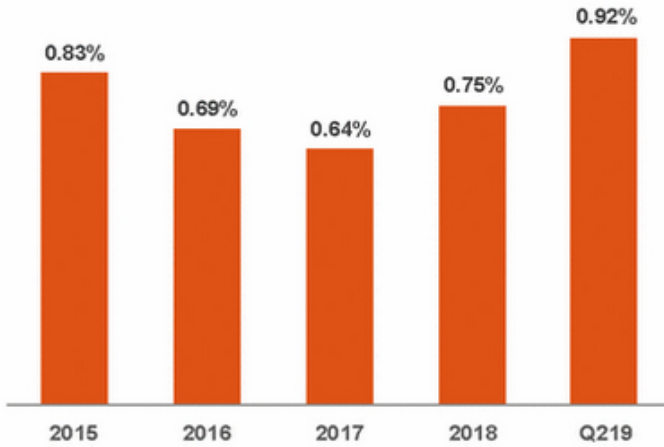
% of Total Non PCI Commercial Loans



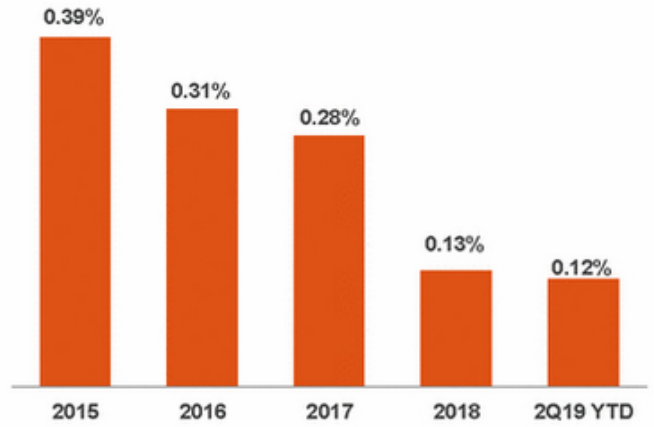
# Strong Credit Quality

- Managed by experienced personnel, MSBI maintains a disciplined approval process and conservative credit culture
- Credit losses have steadily declined since 2015

Nonperforming Assets<sup>1</sup> / Total Assets



NCOs / Average Loans



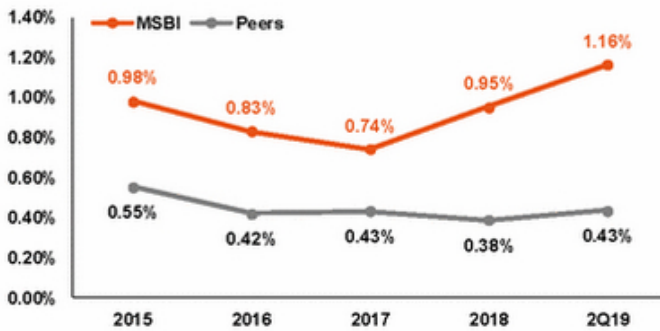
**Notes:**

(1) Excludes performing restructured loans

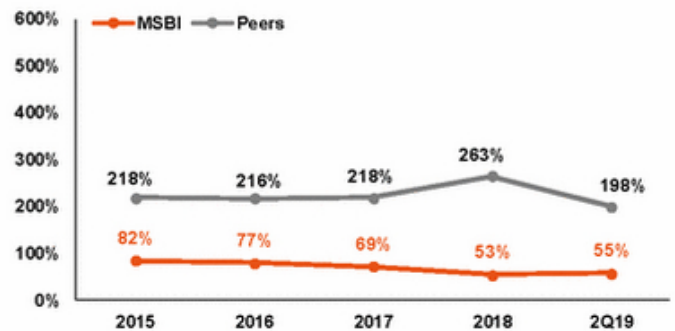


# Credit Quality Review

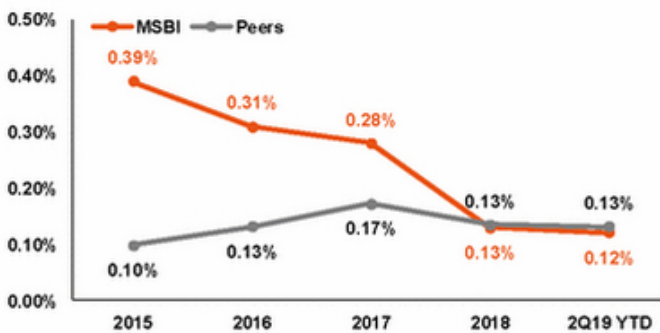
### NPLs<sup>1</sup> / Gross Loans (%)



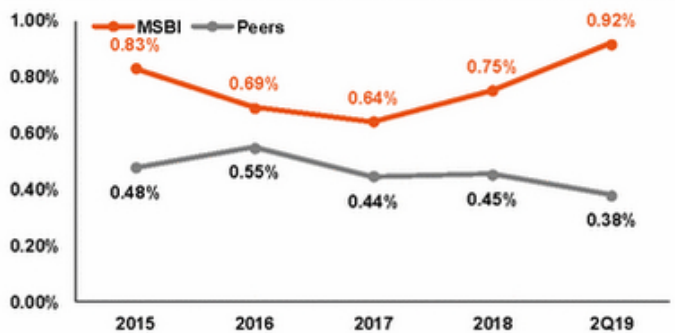
### Reserves / NPLs<sup>1</sup> (%)



### NCOs / Average Loans (%)



### NPAs<sup>1</sup> / Total Assets (%)



**Notes:**

(1) Excludes performing restructured loans  
 Peers include Midwest Banks publicly traded on Major Exchanges with Assets \$4.0bn - \$10.0bn  
 Source: S&P Global Market Intelligence



# Acquired Loans – Adjusted Loan Loss Reverse

## Credit Marks From Acquisitions – 2Q19

(dollars in thousands)

	PCI	Performing	Total	% of Total Loans
Other Legacy	923	125	1,048	0.03%
Heartland	1,847	276	2,123	0.05%
Centrue	2,174	1,707	3,880	0.10%
Alpine	7,290	1,754	9,043	0.22%
	<u>12,233</u>	<u>3,861</u>	<u>16,094</u>	<u>0.39%</u>
			<b>Total Loans</b>	<b>4,073,527</b>
<b><u>Allowance + Credit Mark to Total Loans:</u></b>				
Allowance to Total Loans				0.64%
Credit Marks				<u>0.39%</u>
Allowance + Credit Marks to Total Loans				<u><u>1.03%</u></u>

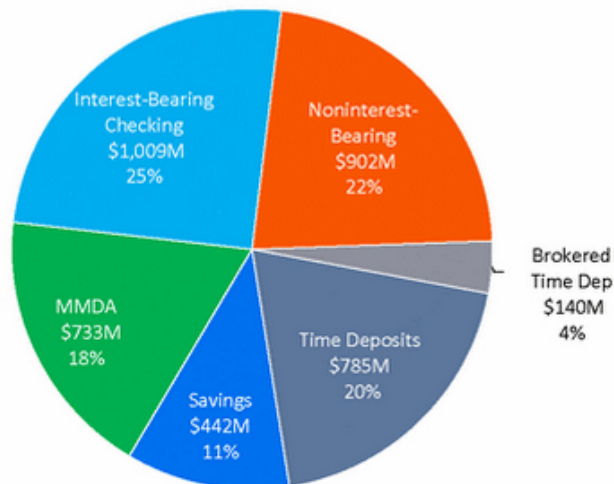




# Strong Core Deposit Base<sup>1</sup>

- 94% core deposits<sup>2</sup>
- Recent acquisitions have improved overall funding mix
- 22% non-interest bearing deposits
- Retail deposits represent 54% of total deposits

Deposit Mix



Core Deposits<sup>2</sup>

(dollars in billions)



**\$4.01 Billion Total Deposits**  
**0.84% Cost (2Q19 YTD)**

**Notes:**

(1) As of or for the six months ended June 30, 2019

(2) Core deposits defined as total deposits less brokered deposits and certificates of deposit greater than \$250,000



# Largest Deposit Relationships

<i>(dollars in thousands)</i>				
Customer	Current Balance	Percent of Total Deposits	Number of Accounts	Industry
Customer (1)	\$35,709	0.89%	27	Public Funds - County
Customer (2)	30,672	0.76	1	Business
Customer (3)	23,353	0.58	25	Public Funds - City
Customer (4)	20,464	0.51	21	Public Funds - City
Customer (5)	19,194	0.48	4	Business
Customer (6)	16,640	0.41	7	Business
Customer (7)	14,305	0.36	1	Business
Customer (8)	13,007	0.32	3	Business
Customer (9)	12,517	0.31	7	Business
Customer (10)	11,899	0.30	8	Public Funds - Utility
Customer (11)	10,377	0.26	3	Business
Customer (12)	9,836	0.25	13	Business
Customer (13)	9,021	0.22	9	Public Funds - School
Customer (14)	8,329	0.21	7	Business
Customer (15)	7,912	0.20	13	Public Funds - School
Customer (16)	7,683	0.19	3	Public Funds - County
Customer (17)	6,899	0.17	20	Public Funds - County
Customer (18)	6,511	0.16	3	Public Funds - School
Customer (19)	6,460	0.16	4	Business
Customer (20)	6,297	0.16	77	Business
<b>Total</b>	<b>\$277,086</b>	<b>6.91%</b>	<b>256</b>	



# Dominant MSA Deposit Market Share

MSBI is #1 or #2 in Market Share in 42% of the MSAs the company has a deposit presence in

## Rockford, IL

Rank	Institution	Branches	Deposits (\$MM)	Market Share (%)
1	Midland States Bancorp Inc.	16	1,088	17.68
2	Heartland Financial USA Inc.	6	858	13.94
3	JPMorgan Chase & Co.	6	703	11.42
4	Associated Banc-Corp	6	669	10.88
5	Bank of Montreal	11	595	9.68
6	Blackhawk Bancorp Inc.	5	415	6.75
7	Foresight Financial Group Inc.	8	392	6.37
8	PNC Financial Services Group	6	339	5.51
9	U.S. Bancorp	6	238	3.88
10	Centre 1 Bancorp Inc.	3	222	3.61
<b>Market Total</b>		<b>91</b>	<b>6,151</b>	<b>100.00</b>

## Kankakee, IL

Rank	Institution	Branches	Deposits (\$MM)	Market Share (%)
1	Midland States Bancorp Inc.	11	595	33.02
2	Municipal Trust and Savings	3	231	12.83
3	PNC Financial Services Group	3	209	11.59
4	First Trust Financial Corp.	5	197	10.92
5	Romy Hammes Inc.	2	168	9.35
6	Foresight Financial Group Inc.	2	110	6.12
7	First American Bank Corp.	2	92	5.10
8	First Financial Bancorp.	1	64	3.55
9	Illinois State Bancorp Inc.	1	55	3.06
10	St. Anne Bancorp Inc.	1	45	2.49
<b>Market Total</b>		<b>36</b>	<b>1,800</b>	<b>100.00</b>

## Effingham, IL

Rank	Institution	Branches	Deposits (\$MM)	Market Share (%)
1	Midland States Bancorp Inc.	3	557	33.14
2	Prime Banc Corp.	5	331	19.67
3	Washington Savings MHC	2	224	13.29
4	Teutopolis Holding Co.	2	174	10.35
5	Omni Bancorp Inc.	2	139	8.29
6	Fifth Third Bancorp	1	80	4.75
7	Tri-County Bancshares Inc.	1	58	3.46
8	First Mid Bancshares Inc.	2	54	3.23
9	People First Bancshares Inc.	1	29	1.72
10	Country Bancorp Inc.	2	25	1.48
<b>Market Total</b>		<b>22</b>	<b>1,681</b>	<b>100.00</b>

## Dixon, IL

Rank	Institution	Branches	Deposits (\$MM)	Market Share (%)
1	Midland States Bancorp Inc.	2	179	24.86
2	Amboy Bancorp Inc.	5	169	23.56
3	Sterling Federal Bank F.S.B.	2	99	13.72
4	SV Financial Inc.	1	67	9.31
5	NBE Bancshares Inc.	3	47	6.55
6	H.F. Gehant Bancorp Inc.	1	42	5.82
7	Fifth Third Bancorp	1	39	5.47
8	U.S. Bancorp	2	33	4.66
9	Community Illinois Corp.	1	31	4.31
10	First Federal Savings Bank	1	11	1.55
<b>Market Total</b>		<b>21</b>	<b>719</b>	<b>100.00</b>

## Ottawa, IL

Rank	Institution	Branches	Deposits (\$MM)	Market Share (%)
1	Tri-County Financial Group	8	580	15.45
2	Midland States Bancorp Inc.	11	419	11.16
3	Heartland Bancorp Inc.	6	300	7.98
4	First Ottawa Bancshares Inc.	6	267	7.10
5	Eureka Savings Bank	4	261	6.94
6	First Federal Savings Bank	7	191	5.08
7	Ottawa Bancorp Inc.	2	184	4.91
8	LaSalle Bancorp Inc.	2	156	4.16
9	Spring Valley Bancorp Inc.	2	156	4.15
10	Central Banc Inc.	2	143	3.81
<b>Market Total</b>		<b>81</b>	<b>3,756</b>	<b>100.00</b>

### Notes:

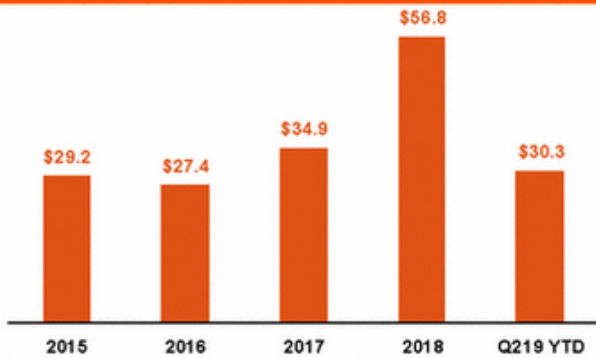
Source: S&P Global Market Intelligence; Deposit market share as of June 30, 2018



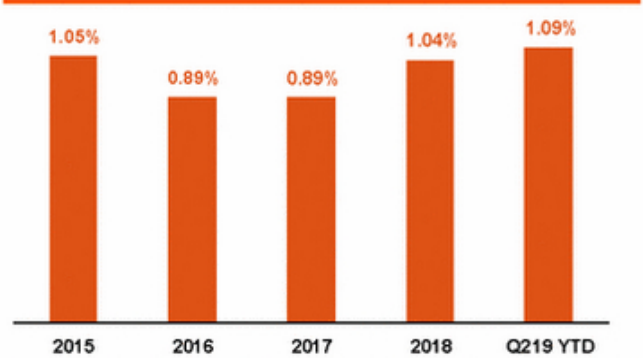


# Demonstrated Historical Earnings Growth

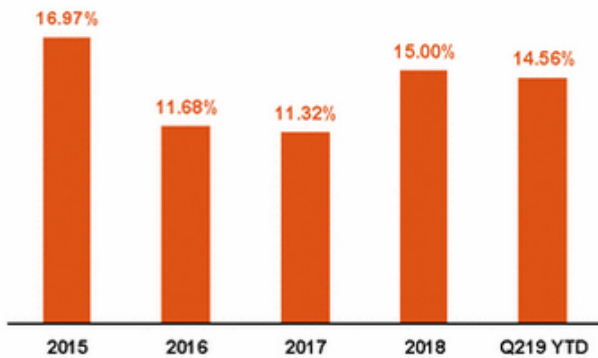
Adjusted Earnings<sup>1</sup> (\$mm)



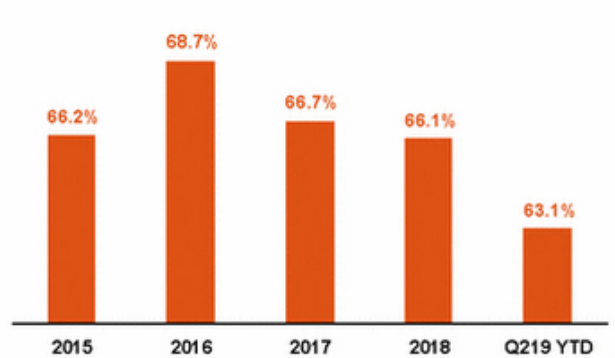
Adjusted ROAA<sup>1</sup> (%)



Adjusted ROATCE<sup>1</sup> (%)



Efficiency Ratio<sup>1</sup> (%)



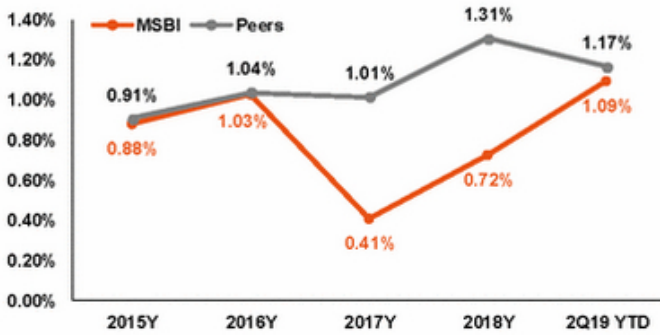
**Notes:**

(1) Non-GAAP financial measures. Refer to Appendix for a reconciliation to the comparable GAAP financial measures

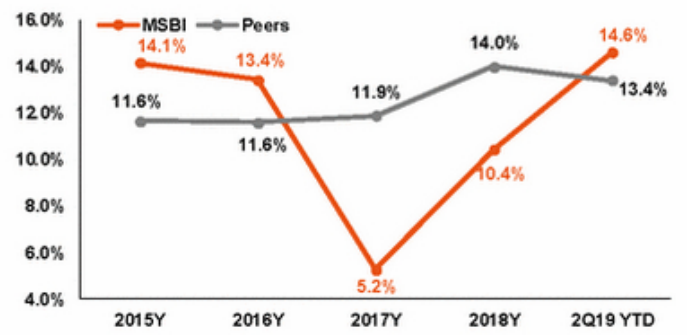


# Performance vs. Peers

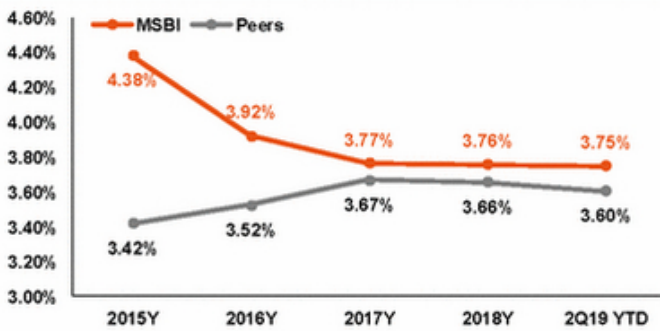
### ROAA (%)



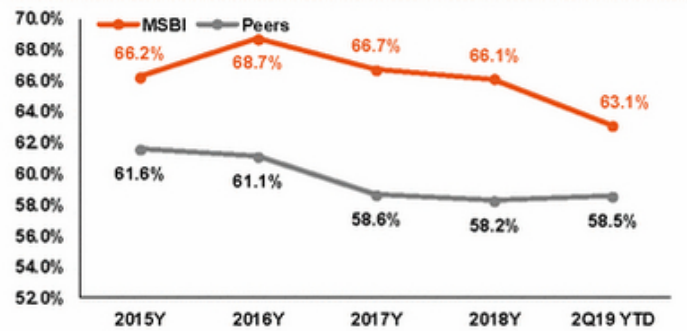
### ROATCE<sup>1</sup> (%)



### Net Interest Margin (%)



### Efficiency Ratio<sup>1</sup> (%)



**Notes:**

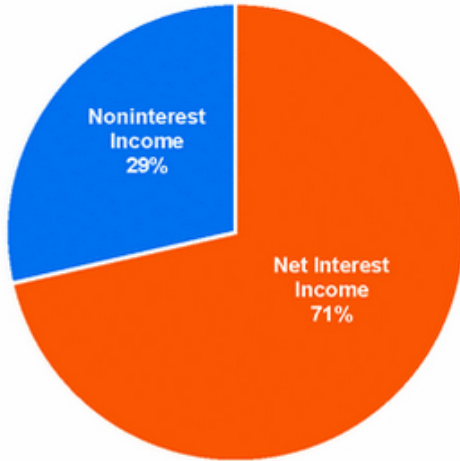
(1) Non-GAAP financial measures. Refer to Appendix for a reconciliation to the comparable GAAP financial measures  
Peers include Midwest Banks publicly traded on Major Exchanges with Assets \$4.0bn - \$10.0bn



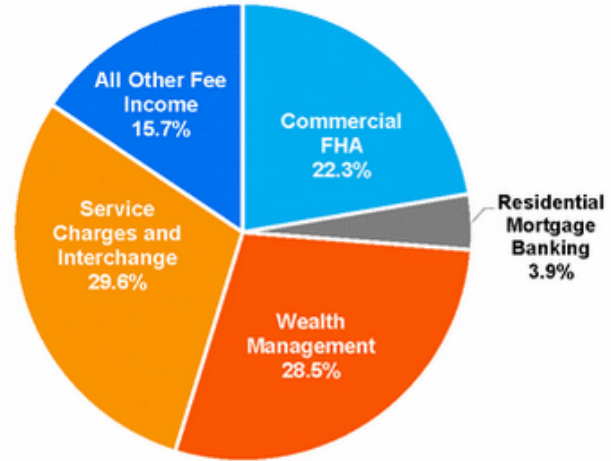
# Revenue Mix

- Diverse revenue mix with nearly 30% noninterest income
- Strong sources of recurring income led by Wealth Management business

YTD 2019 Revenue Mix



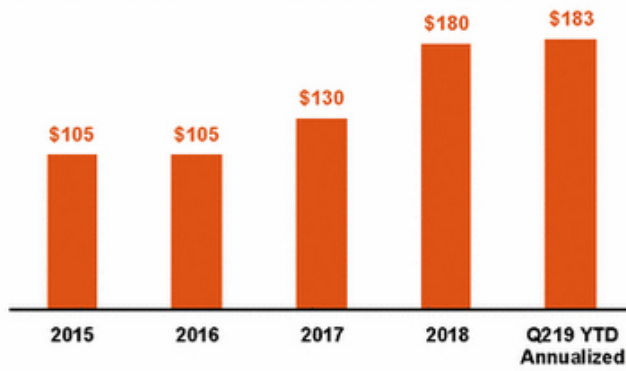
YTD 2019 Noninterest Income Mix



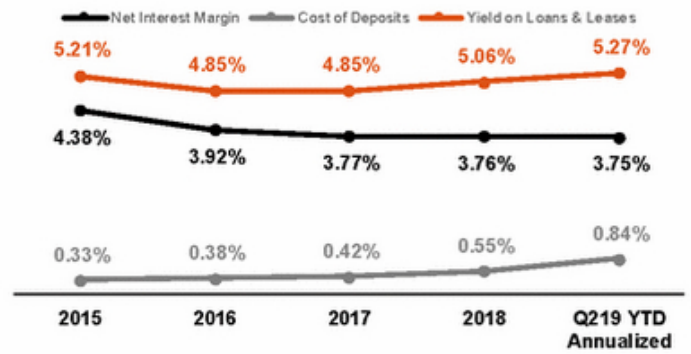


# Net Interest Income and Net Interest Margin

### Net Interest Income (\$mm)



### Yield / Cost Trends (%)



Notes:  
Source: S&P Global Market Intelligence



# Interest Rate Sensitivity and Asset / Liability Management

## Business and Balance Sheet Highlights

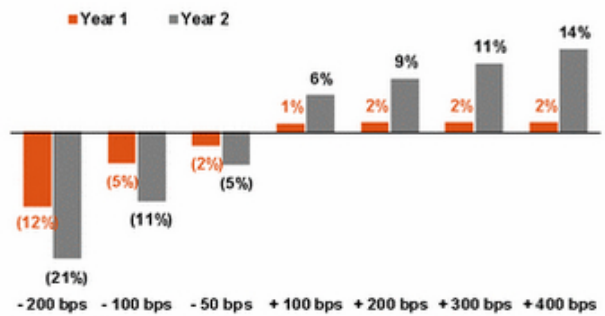
Balanced positioning supports stable net interest margin

- **Strong, low-cost deposit base**
  - \$4.01B total deposits at 84 bps (weighted average)
  - Cumulative interest-bearing deposit beta of 39%
  - ~22% stable core deposit franchise with non-interest bearing accounts
- **Relationship-oriented lending franchise**
  - Distinctive Commercial FHA capabilities of Love Funding drive CRE loan growth in a low rate environment with \$397M in probable pipeline
  - Midland Equipment Finance volume of \$520M YTD enhances fixed rate loan volumes with an attractive profile of intermediate term fixed rate Candel loans at very attractive yields

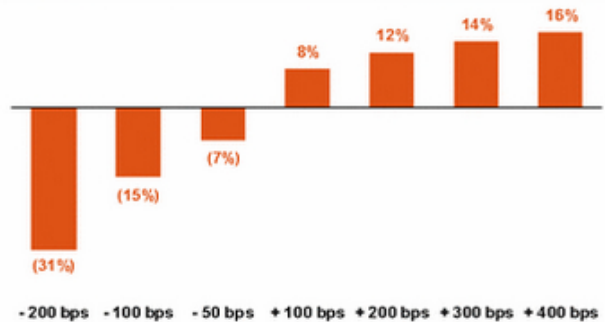
## Positioning

- **Reducing asset sensitivity as the curve flattens and economic growth slows**
  - Higher deposit betas have reduced the benefit to rising short term rates
  - Asset-sensitivity to rising rates decreased as Midland has added more fixed rate assets and moved wholesale funding to more short-term funding
- **Disciplined balance sheet management with recurring re-investment opportunities**
  - \$609 investment securities portfolio is generates ~\$11 MM cash flows per month

## Net Interest Income at Risk as of June 30, 2019



## Economic Value at Risk as of June 30, 2019



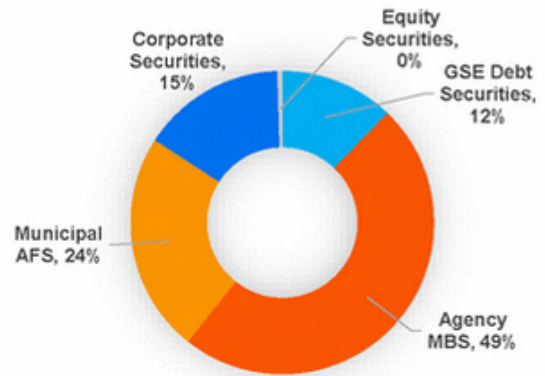




# Investments

- Midland continues to adjust the portfolio to optimize the portfolio's duration, mix, and to increase yield. As of June 2019, the portfolio had an effective duration of approximately 3.25 years
- The portfolio weighted average yield as of June 30, 2019 was 3.41%
- 91.5% of portfolio is investment grade or better

## Investment Portfolio



	Book Value	% of Total Investment Securities	Weighted Average T.E. Yield
(dollars in thousands)			
<b>Investment Securities Available for Sale:</b>			
Government sponsored entity debt	\$74,875	12.2%	2.4%
Agency mortgage-backed	297,362	48.5%	2.8%
State and municipal	143,729	23.5%	4.2%
Corporate	93,691	15.3%	5.0%
<b>Total Securities Available for Sale</b>	<b>\$609,657</b>	<b>99.5%</b>	<b>3.4%</b>
Equity Securities	3,369	0.5%	2.5%
<b>Total Investment Securities</b>	<b>\$613,026</b>	<b>100.0%</b>	<b>3.4%</b>



# Current Borrowings and Available Sources of Liquidity

## Borrowings Overview

- In May 2017, the Company entered into a loan agreement with another bank for a \$10.0 million revolving line of credit and a term loan in the original principal amount of \$40.0 million. The term loan details are:
  - Variable interest rate equal to LIBOR plus 2.25%, which was 4.75% and 4.63% at June 30, 2019 and December 31, 2018, respectively, maturing May 25, 2020
  - MSBI intends to use proceeds from this subordinated debt offering to pay off the \$30 million senior debt and to cancel the revolving line of credit.
- The Company issued \$55.3 million of subordinated debt in a private placement during June 2015. The transaction was structured in two tranches:
  - \$40.3 million, maturing on June 18, 2025 with a redemption option on or after June 18, 2020, with a fixed rate of interest of 6.00%
  - MSBI intends to use proceeds from this subordinated debt offering to redeem \$40.3 million in June 2020
  - \$15.0 million, maturing on June 18, 2025, with a fixed rate of interest of 6.50%
- The Company issued through a private placement, \$40.0 million aggregate principal amount of subordinated debentures on October 13, 2017 with a maturity date of October 15, 2027
  - The subordinated debentures bear a fixed rate of interest of 6.25%
- The Company has \$181,000 of Series G redeemable preferred stock
- The Company has \$65.0 million of variable rate trust preferred debentures:
  - Midland States Preferred Securities Trust – variable interest rate equal to LIBOR plus 2.75%, which was 5.34% and 5.23% at June 30, 2019 and December 31, 2018, respectively – \$10.3 million maturing April 23, 2034
  - Grant Park Statutory Trust I – variable interest rate equal to LIBOR plus 2.85%, which was 5.43% and 5.37%, at June 30, 2019 and December 31, 2018, respectively – \$3.1 million maturing January 23, 2034
  - Love Savings/Heartland Capital Trust III – variable interest rate equal to LIBOR plus 1.75%, which was 4.16% and 4.54% at June 30, 2019 and December 31, 2018, respectively – \$20.6 million maturing December 31, 2036
  - Love Savings/Heartland Capital Trust IV – variable interest rate equal to LIBOR plus 1.47%, which was 3.94% and 4.21% at June 30, 2019 and December 31, 2018, respectively – \$20.6 million maturing September 6, 2037
  - Centruie Statutory Trust II - variable interest rate equal to LIBOR plus 2.65%, which was 5.06% and 5.44% at June 30, 2019 and December 31, 2018, respectively - \$10.3 million maturing June 17, 2034

## Available Lines of Credit and Other Borrowings

- At June 30, 2019, the Company has \$552.2 million in borrowings outstanding from the FHLB
  - Fixed rate, fixed term of \$22.3 million and \$87.7 million, at rates averaging 2.37% and 2.35% at June 30, 2019 and December 31, 2018, respectively, maturing through February 2023
  - Putable fixed rate of \$530.0 million and \$520.0 million at rates averaging 2.24% and 2.09% at June 30, 2019 and December 31, 2018, respectively, maturing through August 2025 with call provisions through August 2021

### Notes:

Source: S&P Global Market Intelligence; Public filings



# Holding Company Liquidity

- MSBI has historically grown dividends at approximately 10% annually
- The company has recently announced a share buyback as an efficient means to return excess capital

## Historical Holding Company Cash Flow

<i>(dollars in thousands)</i>	2015	2016	2017	2018	2Q19
Beginning Cash	\$ 22,759	\$ 8,318	\$ 38,803	\$ 60,424	\$ 20,312
<b>Sources</b>					
Dividends from Subsidiaries	14,500	-	19,500	17,000	20,400
Initial Public Offering	-	71,475	-	-	-
Debt Issuance	55,325	-	79,318	-	-
<b>Uses</b>					
Capital Injection to Subsidiaries	(30,000)	(25,250)	(350)	-	-
Shareholder Dividends	(7,692)	(9,853)	(14,192)	(20,307)	(11,828)
Acquisitions	(20,053)	-	(60,457)	(32,890)	-
Debt Repayment	(14,000)	(8,000)	(2,857)	(4,286)	(2,857)
Interest Paid	(4,681)	(5,706)	(6,570)	(10,279)	(5,295)
Net Tax (Payments) Refunds	(7,972)	4,224	3,857	7,110	2,538
Other	132	3,595	3,372	3,540	2,795
<b>(Decrease) / Increase in Cash</b>	<b>\$(14,441)</b>	<b>\$30,485</b>	<b>\$21,621</b>	<b>\$(40,112)</b>	<b>\$ 5,753</b>
<b>Cash at End of Period</b>	<b>\$ 8,318</b>	<b>\$38,803</b>	<b>\$ 60,424</b>	<b>\$ 20,312</b>	<b>\$26,065</b>

## Holding Company Balance Sheet

<i>(dollars in thousands)</i>	2Q19
<b>Assets</b>	
Cash	\$ 26,065
Total Investment in Subsidiaries	789,979
Other Assets	226
<b>Total Assets</b>	<b>\$ 816,270</b>
<b>Liabilities</b>	
Term Loan	\$ 29,989
Subordinated Debt	94,396
Trust Preferred	48,288
Other Liabilities	3,709
<b>Total Liabilities</b>	<b>\$ 176,382</b>
<b>Equity</b>	
Preferred Equity	2,684
Equity	637,204
<b>Total Equity</b>	<b>\$ 639,888</b>
<b>Total Liabilities &amp; Equity</b>	<b>\$ 816,270</b>

**Notes:**

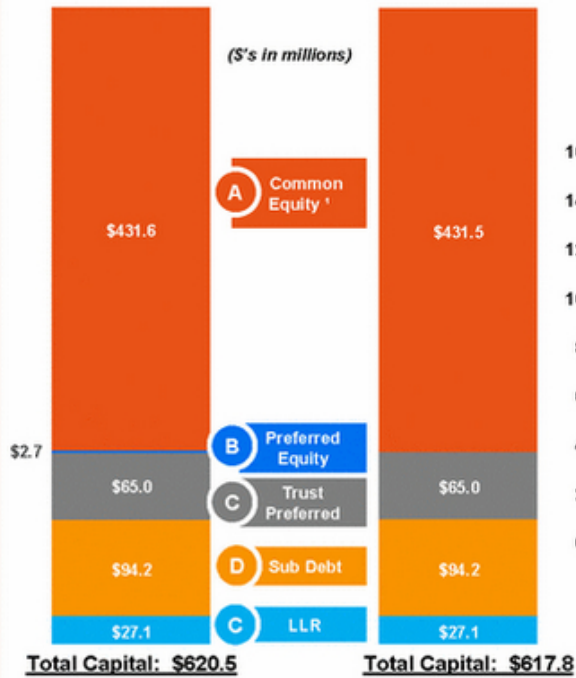
Source: S&amp;P Global Market Intelligence; Financial data as of June 30, 2019



# Capital Overview

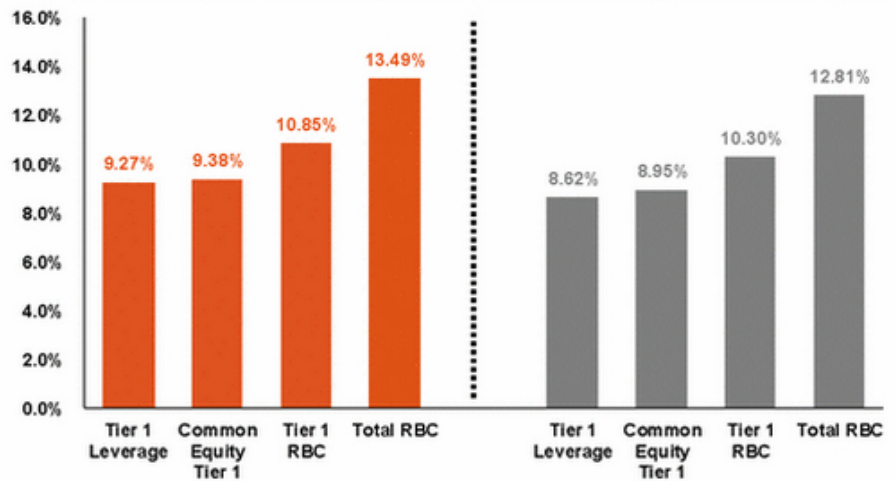
June 30, 2019 Reported Capital

June 30, 2019 Reported Capital Adjusted for Preferred Redemption<sup>2</sup> and HomeStar Acquisition<sup>3</sup>



June 30, 2019 Stated Consolidated Capital Ratios

June 30, 2019 Stated Consolidated Capital Ratios, Adjusted for Preferred Redemption<sup>2</sup> and HomeStar Acquisition<sup>3</sup>



**Notes:**

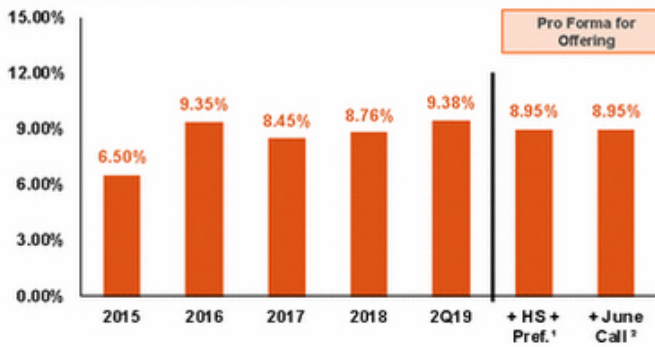
- (1) Includes remaining adjustments to Common Equity Tier 1 Capital
  - (2) On July 29, 2019, the Company redeemed, in whole, the shares of Series H preferred stock
  - (3) Estimates for HomeStar acquisition and July 2019 redemption of preferred equity
- Source: S&P Global Market Intelligence; Financial data as of June 30, 2019





# Consolidated Capital Ratios

### Tier 1 Common Capital Ratio (%)



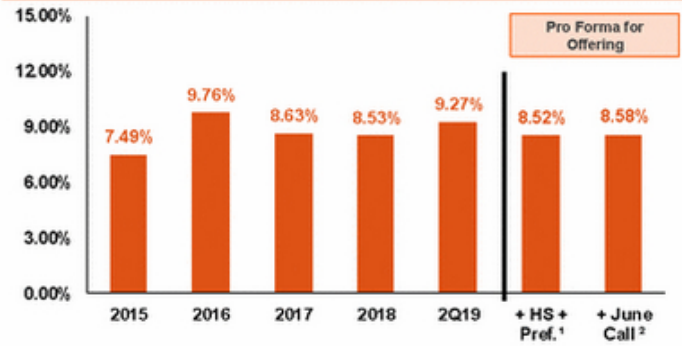
### Tier 1 Capital Ratio (%)



### Total Risk-Based Capital Ratio (%)



### Tier 1 Leverage Ratio (%)



**Notes:**

(1) Estimates for HomeStar acquisition and July 2019 redemption of preferred equity

(2) Assumes call of \$40.3mm subordinated debt callable June 2020; Estimates for HomeStar acquisition and July 2019 redemption of preferred equity

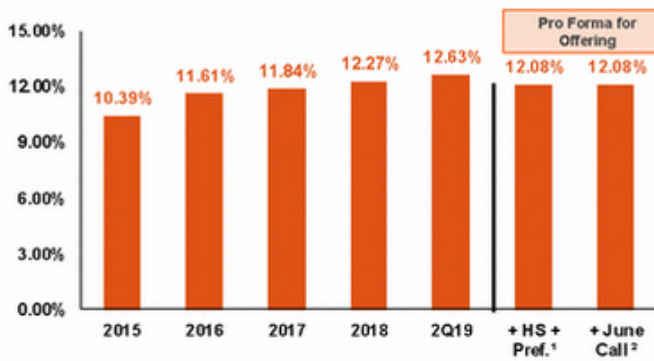
Assumes none of the issuance proceeds are down streamed to the bank subsidiary

Source: S&P Global Market Intelligence; Financial data as of June 30, 2019

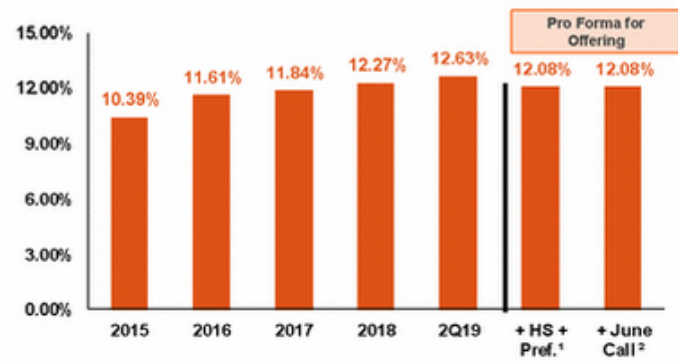


# Bank-Level Capital Ratios

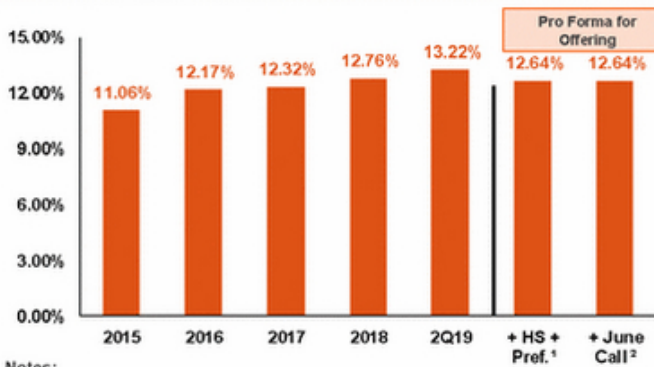
### Tier 1 Common Capital Ratio (%)



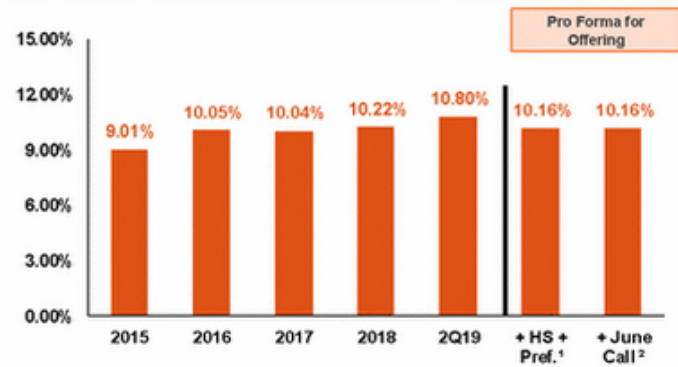
### Tier 1 Capital Ratio (%)



### Total Risk-Based Capital Ratio (%)



### Tier 1 Leverage Ratio (%)



**Notes:**

(1) Estimates for HomeStar acquisition and July 2019 redemption of preferred equity

(2) Assumes call of \$40.3mm subordinated debt callable June 2020; Estimates for HomeStar acquisition and July 2019 redemption of preferred equity

Assumes none of the issuance proceeds are down streamed to the bank subsidiary

Source: S&P Global Market Intelligence; Financial data as of June 30, 2019





# Pro Forma Capitalization Table

(dollars in millions)

as of 6/30/2019	Consolidated					Bank-Level				
	Actual	Preferred Redemption <sup>1</sup>	HomeStar Acquisition <sup>1</sup>	Sub Debt	Term Note	Pro Forma	Actual	HomeStar Acquisition <sup>1</sup>	Sub Debt	Pro Forma
Common Equity	\$637.2	-	\$10.3	-	-	\$647.5	\$781.7	\$11.7	-	\$793.5
(+) Goodwill	(164.2)	-	(4.7)	-	-	(168.9)	(161.8)	(4.7)	-	(166.5)
(+) Other Intangibles	(33.8)	-	(5.7)	-	-	(39.5)	(31.8)	(5.7)	-	(37.5)
(+) Unrealized Gains	(7.2)	-	-	-	-	(7.2)	(7.2)	-	-	(7.2)
(+) Other	(0.5)	-	-	-	-	(0.5)	-	-	-	0.0
Common Equity Tier 1	\$431.6	-	(\$0.1)	-	-	\$431.5	\$581.0	\$1.3	-	\$582.4
(+) Preferred Equity	\$2.7	(\$2.7)	-	-	-	-	-	-	-	-
(+) Trust Preferred	65.0	-	-	-	-	65.0	-	-	-	-
Tier 1 Equity	\$499.2	(\$2.7)	(\$0.1)	-	-	\$496.5	\$581.0	\$1.3	-	\$582.4
(+) Allowance for Loan Losses	\$27.1	-	-	-	-	\$27.1	\$27.1	-	-	\$27.1
(+) Current Sub Debt	\$94.2	-	-	-	-	\$94.2	-	-	-	-
(+) New Sub Debt	-	-	-	100.00	-	100.0	-	-	-	-
Total Risk-Based Capital	\$620.5	(\$2.7)	(\$0.1)	\$100.0	-	\$717.8	\$608.1	\$1.3	-	\$609.4
Risk Weighted Assets	\$4,599.4	-	\$221.8	-	-	\$4,821.2	\$4,599.8	\$222.7	-	\$4,822.5
Total Assets for Leverage Ratio	\$5,384.6	(\$2.7)	\$376.9	\$100.0	(\$30.0)	\$5,828.8	\$5,378.6	\$353.4	-	\$5,732.0
TCE / TA	8.2%					7.6%	11.0%			10.4%
<b>Regulatory Capital Ratios</b>										
Tier 1 Leverage	9.3%					8.5%	10.8%			10.2%
Common Equity Tier 1	9.4%					9.0%	12.6%			12.1%
Tier 1 Capital	10.9%					10.3%	12.6%			12.1%
Total Risk-Based Capital	13.5%					14.9%	13.2%			12.6%
Tangible Common Equity	\$438.6					\$438.6	\$587.2			\$588.5
Tangible Assets	5,347.5					5,786.1	5,344.3			5,682.9

**Notes:**

(1) Estimates for HomeStar acquisition and July 2019 redemption of preferred equity  
 Assumes none of the issuance proceeds are down streamed to the bank subsidiary  
 Source: S&P Global Market Intelligence; Financial data as of June 30, 2019

# Double Leverage and Interest Coverage

## Double Leverage

	Standalone	Pro Forma for Issuance					
		PF for July Preferred, HomeStar & Term Loan Payoff	Illustrative for June 2020 Call of Subdebt				
	2015Y	2016Y	2017Y	2018Y	2019Q2	2019Q2	2019Q2
Investment in Subsidiaries	\$327,323	\$382,241	\$565,498	\$766,449	\$789,979	\$800,319	\$800,319
Consolidated Equity	\$232,880	\$321,770	\$449,545	\$608,525	\$639,888	\$650,228	\$650,228
<b>Double Leverage Ratio</b>	<b>141%</b>	<b>119%</b>	<b>126%</b>	<b>126%</b>	<b>123%</b>	<b>123%</b>	<b>123%</b>
Proposed Holding Company Subordinated Debt Offering					\$100,000	\$100,000	\$100,000
Pro Forma Bank-level Equity					\$789,979	\$800,319	\$800,319
<b>Pro Forma Double Leverage Ratio</b>					<b>123%</b>	<b>123%</b>	<b>123%</b>

## Interest Coverage

	Standalone	PF for July Preferred & HomeStar					
		2019Q2	2019Q2				
	2015Y	2016Y	2017Y	2018Y	2019Q2	2019Q2	2019Q2
Total Deposit Interest	\$7,511	\$8,936	\$12,132	\$22,054	\$8,437	\$8,641	\$8,641
Other Borrowed Interest	\$5,378	\$7,059	\$11,319	\$21,226	\$6,122	\$6,177	\$6,177
Total Interest Expense	\$12,889	\$15,995	\$23,451	\$43,280	\$14,559	\$14,818	\$14,818
Pre-Tax Income	\$35,498	\$50,431	\$26,471	\$50,805	\$21,394	\$22,511	\$22,511
Interest Coverage (including deposit expense)	3.75x	4.15x	2.13x	2.17x	2.47x	2.52x	2.52x
Interest Coverage (excluding deposit expense)	7.60x	8.14x	3.34x	3.39x	4.49x	4.64x	4.64x
						Pro Forma for Issuance	
						& Term Loan Payoff <sup>1</sup>	& Illustrative for June 2020 Call of Subdebt <sup>2</sup>
Pro Forma Interest Expense (Includes Dep. Expense)						\$15,712	\$15,107
Pro Forma Interest Expense (Excludes Dep. Expense)						\$7,071	\$6,466
Pro Forma Pre-Tax Income						\$21,617	\$22,221
New Holding Company Subordinated Debt Expense (5.00%)					\$1,250	\$1,250	\$1,250
Pro Forma Interest Coverage (including deposit expense)					2.35x	2.38x	2.47x
Pro Forma Interest Coverage (excluding deposit expense)					3.97x	4.06x	4.44x

### Notes:

- (1) Excludes interest expense on \$30.0 million of a term loan that MSBI anticipates to redeem in connection with the offering  
(2) Excludes interest expense on \$30.0 million of a term loan that MSBI anticipates to redeem in connection with the offering & interest expense on \$40.3 million of subordinated debt callable June 2020  
Assumes none of the issuance proceeds are down streamed to the bank subsidiary  
Source: S&P Global Market Intelligence





# Appendix

# Appendix: Reconciliation of Adjusted Earnings/Profitability

(dollars in thousands, except per share data)

	Six Months Ended				
	June 30, 2019	For the years ended December 31,			
		2018	2017	2016	2015
<b>Adjusted Earnings</b>					
Income before income taxes - GAAP	\$ 39,730	\$ 50,805	\$ 26,471	\$ 50,431	\$ 35,498
Adjustments to noninterest income:					
Gain on sales of investment securities, net	14	464	222	14,702	193
Other than-temporary-impairment on investment securities	-	-	-	(824)	(461)
FDIC loss-sharing expense	-	-	-	-	(566)
Amortization of FDIC indemnification asset, net	-	-	-	-	(397)
Reversal of contingent consideration accrual	-	-	-	350	-
Other	(23)	89	(67)	-	12
Total adjustments to noninterest income	(9)	553	155	14,228	(1,219)
Adjustments to noninterest expense:					
Expenses associated with payoff of subordinated debt	-	-	-	511	-
Net expense from FDIC loss share termination agreement	-	-	-	351	-
Branch network optimization plan charges	-	-	1,952	2,099	-
(Gain) loss on mortgage servicing rights held for sale	(515)	458	4,059	-	-
Integration and acquisition expenses	446	24,015	17,738	2,343	6,101
Total adjustments to noninterest expense	(69)	24,473	23,749	5,304	6,101
Adjusted earnings pre tax	39,670	74,725	50,065	41,507	42,818
Adjusted earnings tax	9,376	17,962	19,710	14,064	13,625
Revaluation of net deferred tax assets	-	-	(4,540)	-	-
<b>Adjusted earnings - non-GAAP</b>	\$ 30,294	\$ 56,763	\$ 34,895	\$ 27,443	\$ 29,193
Preferred stock dividends, net	68	141	83	-	-
<b>Adjusted earnings available to common shareholders - non-GAAP</b>	\$ 30,226	\$ 56,622	\$ 34,812	\$ 27,443	\$ 29,193
Adjusted diluted earnings per common share	\$ 1.24	\$ 2.39	\$ 1.89	\$ 1.89	\$ 2.39
Weighted average shares outstanding - diluted	24,254,612	23,549,025	18,283,214	14,428,839	12,112,403
Average assets	\$ 5,608,883	\$ 5,455,823	\$ 3,941,272	\$ 3,075,134	\$ 2,768,879
Adjusted return on average assets	1.09%	1.04%	0.89%	0.89%	1.05%
Average tangible common equity	\$ 418,545	\$ 377,602	\$ 307,523	\$ 234,898	\$ 172,064
Adjusted return on average tangible common equity	14.56%	15.00%	11.32%	11.68%	16.97%



# Appendix: Reconciliation of Efficiency Ratio

	As of and for the		As of and for the Years Ended December 31,			
	June 30, 2019	2018	2017	2016	2015	
<i>(dollars in thousands)</i>						
Noninterest expense	\$ 81,291	\$ 191,643	\$ 152,997	\$ 121,289	\$ 117,847	
Adjustments to noninterest expense:						
Expense from payoff of subordinated debt	-	-	-	(511)	-	
Net expense from FDIC loss share termination agreement	-	-	-	(351)	-	
Branch network optimization plan charges	-	-	(1,952)	(2,099)	-	
Gain (loss) on mortgage servicing rights held for sale	515	(458)	(4,059)	-	-	
Integration and acquisition expenses	(446)	(24,015)	(17,738)	(2,343)	(6,101)	
Adjusted noninterest expense	\$ 81,360	\$ 167,170	\$ 129,248	\$ 115,985	\$ 111,746	
Net interest income	\$ 91,678	\$ 180,087	\$ 129,662	\$ 105,254	\$ 104,907	
Effect of tax-exempt income	1,069	2,095	2,691	2,579	2,741	
Adjusted net interest income	92,747	182,182	132,353	107,833	107,648	
Noninterest income	36,662	71,791	59,362	72,057	59,482	
Adjustments to noninterest income:						
Mortgage servicing rights (recapture) impairment	(534)	(450)	2,324	3,135	448	
Gain on sales of investment securities, net	(14)	(464)	(222)	(14,702)	(193)	
Other income	23	(89)	67	608	1,412	
Adjusted noninterest income	36,137	70,788	61,531	61,098	61,149	
Adjusted total revenue	\$ 128,884	\$ 252,970	\$ 193,884	\$ 168,931	\$ 168,797	
Efficiency Ratio	63.13%	66.08%	66.66%	68.66%	66.20%	



# Appendix: Reconciliation of TBV

*(dollars in thousands, except per share data)*

	As of June 30,		As of December 31,		
	2019	2018	2017	2016	2015
<b>Shareholders' Equity to Tangible Common Equity:</b>					
Total shareholders' equity—GAAP	\$ 639,888	\$ 608,525	\$ 449,545	\$ 321,770	\$ 232,880
Adjustments:					
Preferred equity	(2,684)	(2,781)	(2,970)	-	-
Goodwill	(164,673)	(164,673)	(98,624)	(48,836)	(46,519)
Other intangibles	(33,893)	(37,376)	(16,932)	(7,187)	(7,004)
<b>Tangible common equity</b>	<b>\$ 438,638</b>	<b>\$ 403,695</b>	<b>\$ 331,019</b>	<b>\$ 265,747</b>	<b>\$ 179,357</b>
<b>Total Assets to Tangible Assets:</b>					
Total assets—GAAP	\$ 5,546,055	\$ 5,637,673	\$ 4,412,701	\$ 3,233,723	\$ 2,884,824
Adjustments:					
Goodwill	(164,673)	(164,673)	(98,624)	(48,836)	(46,519)
Other intangibles	(33,893)	(37,376)	(16,932)	(7,187)	(7,004)
<b>Tangible assets</b>	<b>\$ 5,347,489</b>	<b>\$ 5,435,624</b>	<b>\$ 4,297,145</b>	<b>\$ 3,177,700</b>	<b>\$ 2,831,301</b>
<b>Common shares outstanding</b>	<b>23,897,038</b>	<b>23,751,798</b>	<b>19,122,049</b>	<b>15,483,499</b>	<b>11,797,404</b>
<b>Tangible common equity to tangible assets ratio</b>	<b>8.20%</b>	<b>7.43%</b>	<b>7.70%</b>	<b>8.36%</b>	<b>6.33%</b>
<b>Tangible book value per share</b>	<b>\$ 18.36</b>	<b>\$ 17.00</b>	<b>\$ 17.31</b>	<b>\$ 17.16</b>	<b>\$ 15.20</b>



## Appendix: Reconciliation of ROATCE

(dollars in thousands)	As of and for the	As of and for the Years Ended December 31,			
	Six Months Ended June 30, 2019	2018	2017	2016	2015
<b>Net Income</b>	\$ 30,337	\$ 39,421	\$ 16,056	\$ 31,542	\$ 24,324
Less—preferred stock dividends	68	141	83	-	-
<b>Net income available to common shareholders</b>	<u>\$ 30,269</u>	<u>\$ 39,280</u>	<u>\$ 15,973</u>	<u>\$ 31,542</u>	<u>\$ 24,324</u>
<b>Average Shareholders' Equity to Average Tangible Common Equity:</b>					
Average total shareholders' equity—GAAP	\$ 621,510	\$ 569,537	\$ 399,061	\$ 288,010	\$ 227,619
Adjustments:					
Preferred equity	(2,733)	(2,882)	(1,707)	-	-
Goodwill	(164,673)	(151,546)	(76,394)	(46,537)	(47,306)
Other intangibles	(35,559)	(37,507)	(13,437)	(6,575)	(8,249)
Average tangible common equity	<u>\$ 418,545</u>	<u>\$ 377,602</u>	<u>\$ 307,523</u>	<u>\$ 234,898</u>	<u>\$ 172,064</u>
<b>Return on average tangible common equity</b>	14.58 %	10.40 %	5.19 %	13.43 %	14.14