

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): **March 15, 2010**

SERVISFIRST BANCSHARES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation)

0-53149
(Commission File Number)

26-0734029
(IRS Employer Identification No.)

850 Shades Creek Parkway, Birmingham, Alabama
(Address of Principal Executive Offices)

35209
(Zip Code)

(205) 949-0302
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Section 1 – Registrant’s Business and Operations

Item 1.01. Entry into a Material Definitive Agreement

ServisFirst Bancshares, Inc. (the “Company”) established a new Delaware statutory trust subsidiary, ServisFirst Capital Trust II (the “Trust”), which issued, as of March 15, 2010, 15,000 shares of its 6.0% Mandatory Convertible Trust Preferred Securities (the “Preferred Securities”) for \$15,000,000, or \$1,000 per Preferred Security. The Trust simultaneously issued 50,000 shares of its common securities to the Company for a purchase price of \$50,000, or \$1.00 per share, which together with the Preferred Securities, constitutes all of the issued and outstanding securities of the Trust (collectively, the “Trust Securities”). The Trust invested all of the proceeds from the sale of the Trust Securities in the Company’s 6.0% Junior Subordinated Mandatory Convertible Deferrable Interest Debentures due March 15, 2040 in the principal amount of \$15,050,000 (the “Subordinated Debentures”). The Preferred Securities were offered and sold to accredited investors in a private placement. The Company will use the net proceeds from this private placement for general working capital.

Holders of the Preferred Securities will be entitled to receive distributions accruing from March 15, 2010, (the “Issue Date”), and payable quarterly in arrears on March 15, June 15, September 15 and December 15 of each year (each, a “Distribution Date”), commencing June 15, 2010 unless the Company defers interest payments on the Subordinated Debentures. From the Issue Date, distributions accrue at an annual rate equal to 6.0% (the “Securities Rate”) of the liquidation amount of \$1,000 per Preferred Security. The Securities Rate and the Distribution Dates for the Preferred Securities correspond to the interest rate and payment dates on the Subordinated Debentures, which constitute substantially all the assets of the Trust. As a result, if principal or interest is not paid on the Subordinated Debentures, no corresponding amounts will be paid on the Preferred Securities. The Trust also pays a distribution on the common securities at an annual rate of 6.0% of the purchase price of the common securities, but such payments are financially immaterial since they simply represent a return of funds to the Company.

The Subordinated Debentures are subordinate and junior in right of payment to all of the Company’s Senior Debt, as defined in the Indenture (as defined below); provided, however, that, while any of the Preferred Securities remain outstanding, the Company shall not incur any additional Senior Debt in excess of 0.5% of the Company’s average assets for the fiscal year immediately preceding, unless approved by the holders of a majority of the outstanding Preferred Securities. The Company has the right to defer payments of interest on the Subordinated Debentures by extending the interest payment period on the Subordinated Debentures, at any time and from time to time, for up to 20 consecutive quarterly periods for each deferral period. During any deferral period, the Company may not (i) pay dividends on or redeem any of its capital stock, (ii) pay principal of or interest on any debt securities ranking *pari passu* with or subordinate to the Subordinated Debentures or (iii) make any guaranty payments with respect to any guaranty of the debt securities of any of the Company’s subsidiaries if such guaranty ranks *pari passu* with or junior in right of payment to the Subordinated Debentures.

The Trust Securities were issued pursuant to an Amended and Restated Trust Agreement of the Trust, dated March 15, 2010, a copy of which is attached hereto as Exhibit 10.1. The Subordinated Debentures were issued pursuant to an Indenture, dated March 15, 2010, by and between the Company, as issuer, and Wilmington Trust Company, as trustee (the “Indenture”), a copy of which is attached hereto as Exhibit 10.2.

If not previously redeemed or converted into common stock of the Company, all Preferred Securities will automatically and mandatorily convert into such common stock on March 15, 2013 (the “Mandatory Conversion Date”) at a conversion price of \$25 per share of common stock (the “Conversion Price”). In addition to such mandatory conversion, Preferred Securities may be converted into common stock of the Company at the option of the holder at any time prior to the earliest to occur of maturity, redemption or mandatory conversion at the Conversion Price.

The Preferred Securities are subject to mandatory redemption upon repayment of the Subordinated Debentures at their Stated Maturity (as defined in the Indenture), or upon earlier redemption of the Subordinated Debentures. The Subordinated Debentures are redeemable by the Company at any time in whole, but not in part, upon the occurrence of a Special Event, as defined in the Indenture.

The Company has the right at any time to terminate the Trust and cause the Subordinated Debentures to be distributed to the holders of the Preferred Securities in liquidation of the Trust. This right is optional and wholly within the Company's discretion. Circumstances under which the Company may determine to exercise such right could include, but are not limited to, the occurrence of a Capital Event, an Investment Company Act Event or a Tax Event, each as defined in the Indenture, adverse tax consequences to the Company or the Trust that are not within the definition of a Tax Event because such tax consequences do not result from an amendment or change described in such definition, and changes in the accounting requirements applicable to the Preferred Securities

Section 2 – Financial Information

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

The information set forth under Item 1.01 of this Current Report is incorporated herein by reference in its entirety.

The Company guarantees the payment of the distributions on the Preferred Securities under a Preferred Securities Guaranty Agreement (the "Guaranty"), a copy of which is attached hereto as Exhibit 10.3, but only to the extent the Trust has funds legally and immediately available to make such distributions. The obligations of the Company under the Guaranty will be subordinate and junior in right of payment to all other of the Company's liabilities and will rank *pari passu* with the most senior preferred stock issued by the Company, if any.

Section 3 – Securities and Trading Markets

Item 3.02. Unregistered Sales of Equity Securities

The information set forth under Item 1.01 of this Current Report is incorporated herein by reference in its entirety.

The issuance of the Preferred Securities was, and the issuance and sale of the shares of the Company's common stock upon conversion of the Preferred Securities will be, exempt from registration under the Securities Act of 1933 (the "Act"), in reliance on the exemptions from the registration requirements of the Act for transactions not involving any public offering pursuant to Section 4(2) under the Act and Rule 506 of Regulation D thereunder.

Section 7 – Regulation FD

Item 7.01. Regulation FD Disclosure.

On March 18, 2010, the Company issued press releases announcing the completion of the above-described private placement in each of its four primary markets. The press release relating to the Birmingham market was also released generally over a national wire service. Copies of the press releases are attached hereto as Exhibit 99.1.

Section 9 – Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits	Description
Exhibit 10.1	Amended and Restated Trust Agreement of ServisFirst Capital Trust II, dated March 15, 2010.
Exhibit 10.2	Indenture, dated March 15, 2010, by and between ServisFirst Bancshares, Inc. and Wilmington Trust Company.
Exhibit 10.3	Preferred Securities Guaranty Agreement, dated March 15, 2010, by and between ServisFirst Bancshares, Inc. and Wilmington Trust Company.
Exhibit 99.1	Press Releases issued by ServisFirst Bancshares, Inc. on March 18, 2010.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

SERVISFIRST BANCSHARES, INC.

Date: March 18, 2010

By: _____
/s/William M. Foshee
William M. Foshee
Executive Vice President
and Chief Financial Officer

AMENDED AND RESTATED TRUST AGREEMENT

OF

SERVISFIRST CAPITAL TRUST II

MARCH 15, 2010

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**AMENDED AND RESTATED
TRUST AGREEMENT
OF
SERVISFIRST CAPITAL TRUST II**

March 15, 2010

AMENDED AND RESTATED TRUST AGREEMENT ("Trust Agreement") dated and effective as of March 15, 2010, by the Trustees (as defined herein), the Depositor (as defined herein) and by the Holders (as defined herein), from time to time, of undivided beneficial interests in the Trust to be issued pursuant to this Trust Agreement;

WHEREAS, the Delaware Trustee and the Depositor established ServisFirst Capital Trust II (the "Trust"), a statutory trust created under the Delaware Statutory Trust Act pursuant to a Trust Agreement dated as of February 9, 2010 (the "Original Agreement"), and a Certificate of Trust filed with the Secretary of State of the State of Delaware on February 9, 2010, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Debentures of the Debenture Issuer (each as hereinafter defined);

WHEREAS, prior to the date hereof, no Trust Securities have been issued;

WHEREAS, all of the Trustees and the Depositor, by this Trust Agreement, amend and restate each and every term and provision of the Original Agreement; and

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

ARTICLE I

INTERPRETATION AND DEFINITIONS

Section 1.1 Definitions.

Unless the context otherwise requires:

- (a) Capitalized terms used in this Trust Agreement but not defined in the preamble above or elsewhere herein have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Trust Agreement has the same meaning throughout;

(c) all references to "the Trust Agreement" or "this Trust Agreement" are to this Trust Agreement (including Appendix I hereto and Exhibit A hereto) as modified, supplemented or amended from time to time;

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

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Trust Agreement unless otherwise defined in this Trust Agreement or unless the context otherwise requires;

(f) a term defined in the Indenture (as defined herein) has the same meaning when used in this Trust Agreement unless otherwise defined in this Trust Agreement or the context otherwise requires; and

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

"Accredited Investor" has the meaning set forth in Rule 501(a) of Regulation D under the Securities Act.

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

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

"Agent" means any Paying Agent or Registrar.

"Authorized Officer" of a Person means any other Person that is authorized to legally bind such former Person.

"Book Entry Interest" means a beneficial interest in a Global Certificate registered in the name of a Clearing Agency or its nominee, ownership and transfers of which shall be maintained and made through book entries by a Clearing Agency as described in Section 9.4.

"Business Day" means any day other than a Saturday or a Sunday or a day on which banking institutions in The City of New York or Wilmington, Delaware are authorized or required by law or executive order to close.

"Clearing Agency" means an organization registered as a "Clearing Agency" pursuant to Section 17A of the Exchange Act that is acting as depositary for the Preferred Securities and in whose name or in the name of a nominee of that organization shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Preferred Securities.

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

"Closing Time" means March 15, 2010.

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

"Commission" means the United States Securities and Exchange Commission as from time to time constituted, or if any time after the execution of this Trust Agreement such Commission is not existing and performing the duties now assigned to it under applicable Federal securities laws, then the body performing such duties at such time.

"Common Securities" has the meaning specified in Section 7.1(a).

"Company" means ServisFirst Bancshares, Inc., a Delaware corporation, or any successor entity resulting from any consolidation, amalgamation, merger or other business combination.

"Company Common Stock" means the common stock, par value \$.001 per share, of the Company or any other class of stock resulting from changes or reclassifications of such Common Stock consisting solely of changes in par value, or from par value to no par value, or from no par value to par value.

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

"Confidential Offering Memorandum" has the meaning set forth in Section 3.6(b).

"Conversion Agent" means the Debenture Trustee, in its capacity as Conversion Agent, or such other Conversion Agent as may be appointed by the Company hereunder.

"Conversion Price" has the meaning set forth in Section 5(c) of Annex I hereto.

"Conversion Stock" means one or more shares of Company Common Stock issuable upon conversion of the Preferred Securities or the Debentures.

"Corporate Trust Office" means the office of the Property Trustee at which the corporate trust business of the Property Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Agreement is located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890 Attention: Corporate Trust Administration.

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

"Debenture Issuer" means ServisFirst Bancshares, Inc., a Delaware corporation, or any successor entity resulting from any consolidation, amalgamation, merger or other business combination, in its capacity as issuer of the Debentures under the Indenture.

"Debenture Trustee" means Wilmington Trust Company, a Delaware banking corporation, as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

"Debentures" means the 6.0% Junior Subordinated Mandatory Convertible Deferrable Interest Debentures due March 15, 2040 of the Debenture Issuer issued pursuant to the Indenture.

"Default" means an event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

"Definitive Preferred Securities" has the meaning set forth in Section 7.3(b).

"Delaware Trustee" has the meaning set forth in Section 5.2.

"Depositor" means ServisFirst Bancshares, Inc., a Delaware corporation, or any successor entity resulting from any merger, consolidation, amalgamation or other business combination, in its capacity as sponsor of the Trust.

"Direct Action" has the meaning set forth in Section 3.8(c).

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

"Distribution Date" has the meaning set forth in Section 6.1.

"DTC" means The Depository Trust Company, the initial Clearing Agency.

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

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

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

"GAAP" means generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Depositor and its subsidiaries throughout the period indicated and consistent with the prior financial practice of the Depositor and its subsidiaries.

"Global Preferred Securities" has the meaning set forth in Section 7.3(b).

"Guarantor" means ServisFirst Bancshares, Inc., a Delaware corporation, or any successor entity resulting from any consolidation, amalgamation, merger or other business combination in its capacity as guarantor under the Preferred Securities Guaranty.

"Holder" means (i) a Person in whose name a Security is registered, such Person being a beneficial owner within the meaning of the Statutory Trust Act, and (ii) a Preferred Security Beneficial Owner.

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

"Indenture" means the Indenture dated as of March 15, 2010 among the Debenture Issuer and the Debenture Trustee, as amended from time to time.

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

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

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

"Liquidation Amount" with respect to any Security means the amount designated as such with respect thereto in Annex I hereto.

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

"Mandatory Conversion Date" means March 15, 2013.

"Ministerial Action" has the meaning set forth in Annex I hereto.

"Officers' Certificate" means, with respect to any Person, a certificate signed by two of the following: the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Secretary or the Treasurer of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

- (a) a statement that each officer signing the Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Certificate;
- (c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"Opinion of Counsel" means a written opinion of counsel, who may be an employee of the Depositor, and who shall be acceptable to the Property Trustee.

"Paying Agent" has the meaning specified in Section 7.4.

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

"Preferred Securities" has the meaning specified in Section 7.1(a).

"Preferred Securities Guaranty" means the guaranty agreement dated as of March 15, 2010 of the Guarantor in respect of the Preferred Securities.

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

"Property Trustee" has the meaning set forth in Section 5.3(a).

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

"Qualified Institutional Buyer" has the meaning set forth in Rule 144A under the Securities Act.

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

"Redemption Price" has the meaning set forth in Section 4(a) of Annex I hereto.

"Registrar" has the meaning set forth in Section 7.4.

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

"Responsible Officer" means, with respect to the Property Trustee, any officer assigned to the Trust and Security Services Office of the Property Trustee, including any managing director, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and having direct responsibility for the administration of this Trust Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Rule 3a-5" means Rule 3a-5 under the Investment Company Act, or any successor rule or regulation.

"Rule 144A" means Rule 144A under the Securities Act, or any successor rule or regulation.

"Securities" or **"Trust Securities"** means the Common Securities and the Preferred Securities.

"Securities Act" means the Securities Act of 1933, as in effect from time to time, or any successor legislation.

"Special Event" has the meaning set forth in Section 4(c) of Annex I hereto.

"Statutory Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 *et seq.*, as in effect from time to time, or any successor legislation.

"Successor Entity" has the meaning specified in Section 3.15(b).

"Successor Delaware Trustee" has the meaning specified in Section 5.7(b)(ii).

"Successor Property Trustee" has the meaning specified in Section 5.7(b)(i).

"Successor Securities" has the meaning specified in Section 3.15(b).

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

"10% in Liquidation Amount" means, with respect to the Trust Securities, except as provided in the terms of the Preferred Securities or by the Trust Indenture Act, Holder(s) of outstanding Trust Securities voting together as a single class or, as the context may require, Holders of outstanding Preferred Securities or Holders of outstanding Common Securities voting separately as a class, who are the record owners of 10% or more of the aggregate Liquidation Amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

"Treasury Regulations" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations are in effect from time to time (including corresponding provisions of succeeding regulations).

"Trustee" or **"Trustees"** means each Person who has signed this Trust Agreement as a trustee (including the Property Trustee, the Delaware Trustee and the Administrative Trustees), so long as such Person shall continue as a trustee of the Trust in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as in effect from time to time, or any successor legislation.

ARTICLE II

TRUST INDENTURE ACT

Section 2.1 **Trust Indenture Act; Application.**

(a) This Trust Agreement is not subject to or governed by the Trust Indenture Act except to the extent set forth herein as expressly agreed to by the parties to this Trust Agreement.

(b) The Property Trustee shall be the only Trustee that is a Trustee for the purposes of construing this Trust Agreement in accordance with the Trust Indenture Act, as applicable.

(c) The application of the provisions of the Trust Indenture Act to this Trust Agreement as set forth herein shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

Section 2.2 **Lists of Holders of Securities.**

(a) Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide the Property Trustee, unless the Property Trustee is Registrar for the Securities, (i) within 5 days after each record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, provided that neither the Depositor nor the Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Depositor and the Administrative Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity), provided that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

Section 2.3 **Reports by the Property Trustee.**

(a) The Property Trustee shall transmit to the Holders of the Preferred Securities such reports concerning the Property Trustee and its actions under this Trust Agreement as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Property Trustee shall, within sixty days after each anniversary following the date of this Trust Agreement, commencing March 15, 2011, deliver to the Holders of the Preferred Securities a brief report, dated as of such date, which complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to the Holders of the Preferred Securities, be filed by the Property Trustee with the Company. The Company will promptly notify the Property Trustee in writing if and when the Preferred Securities are listed on any stock exchange.

Section 2.4 **Periodic Reports to Property Trustee.**

(a) General. The Depositor will furnish to the Property Trustee:

(i) unless the Depositor is then filing comparable reports pursuant to the reporting requirements of the Exchange Act, as soon as practicable and in any event within 45 days after the end of the first, second and third quarterly accounting periods of each fiscal year (commencing with the quarter ending March 31, 2010), the Depositor's unaudited consolidated balance sheet as of the last day of such quarterly period and the related consolidated statements of income and cash flows during such quarterly period prepared in accordance with GAAP and (in the case of second and third quarterly periods) for the portion of the fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year;

(ii) unless the Depositor is then filing comparable reports pursuant to the reporting requirements of the Exchange Act, as soon as practicable and in any event within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2009), the Depositor's consolidated balance sheet as of the end of such year and the related consolidated statements of income, cash flows, and shareholders' equity during such year setting forth in each case in comparative form corresponding figures from the preceding fiscal year accompanied by an audit report thereon of a firm of independent public accountants registered with the Public Company Accounting Oversight Board (the "PCAOB");

(iii) at the time of the delivery of the report provided for in clause (ii) above (or at the time of the filing of the comparable report pursuant to the Exchange Act), an Officers' Certificate as set forth in Exhibit D to this Trust Agreement to the effect that, to the best of such officers' knowledge, no Default or Event of Default under this Trust Agreement has occurred and is continuing or, if any Default or Event of Default hereunder has occurred and is continuing, specifying the nature and extent thereof and what action the Depositor is taking or proposes to take in response thereto;

(iv) the Depositor and the Administrative Trustees shall file annually with the Property Trustee a certificate as to whether or not they are in compliance with all the conditions and covenants applicable to them under the Trust Agreement; and

(v) promptly after the Depositor obtains actual knowledge of the occurrence thereof, written notice of the occurrence of any event or condition which constitutes an Event of Default, and an Officers' Certificate of the Depositor specifically stating that such Event of Default has occurred and setting forth the details thereof and the action which the Depositor is taking or proposes to take with respect thereto.

(b) All such information provided to the Property Trustee as indicated above also will be provided by the Property Trustee upon written request to the Property Trustee (which may be a single continuing request), to (x) Holders and (y) prospective purchasers of Preferred Securities (and of beneficial interests in Preferred Securities). The Depositor will furnish to the Property Trustee, upon its request, sufficient copies of all such information to accommodate the requests of such Holders and prospective purchasers of Preferred Securities (and of beneficial interests in Preferred Securities).

(c) Upon the request of any Holder or the Property Trustee (on behalf of a Holder), the Depositor will furnish such information as is specified in paragraph (d)(4) of Rule 144A to Holders and prospective purchasers of Preferred Securities (and of beneficial interests in Preferred Securities) who are Qualified Institutional Buyers or Accredited Investors or to the Property Trustee for delivery to such Holders or prospective purchasers of Preferred Securities (or of beneficial interests in Preferred Securities) as the case may be, unless, at the time of such request, the Depositor is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Section 2.5 **Evidence of Compliance with Conditions Precedent.**

- (a) The Depositor shall furnish to the Property Trustee evidence of compliance with the conditions precedent, if any, provided for in the Trust Agreement (including any covenants compliance with which constitutes a condition precedent) which relate to the satisfaction and discharge of the Trust Agreement, or to any other action to be taken by the Property Trustee at the request or upon the application of such obligor. Such evidence shall consist of the following:
- (i) Certificates or opinions made by officers of the Depositor who are specified in the Trust Agreement, stating that such conditions precedent have been complied with; and
 - (ii) An opinion of counsel (who may be of counsel of the Depositor) stating that in his opinion such conditions precedent have been complied with.
- (b) Each certificate or opinion with respect to compliance with a condition or covenant provided for in the Trust Agreement shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 2.6 **Events of Default; Waiver.**

- (a) The Holders of a Majority in Liquidation Amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences, provided that, if the underlying Event of Default under the Indenture:
- (i) is not waivable under the Indenture, the Event of Default under the Trust Agreement shall also not be waivable; or
 - (ii) requires the consent or vote of greater than a majority in aggregate principal amount of the holders of the Debentures (a "Super Majority") to be waived under the Indenture, the Event of Default under the Trust Agreement may only be waived by the vote of the Holders of at least the proportion in aggregate Liquidation Amount of the Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding.

Upon such waiver, any such Default shall cease to exist, and any Event of Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured, for every purpose of this Trust Agreement, but no such waiver shall extend to any subsequent or other Default or an Event of Default with respect to the Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Preferred Securities of an Event of Default with respect to the Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Event of Default with respect to the Common Securities for all purposes of this Trust Agreement without any further act, vote, or consent of the Holders of the Common Securities.

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

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

(ii) requires the consent or vote of a Super Majority to be waived, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Trust Agreement as provided below in this Section 2.6(b), the Event of Default under the Trust Agreement may only be waived by the vote of the Holders of at least the proportion in aggregate Liquidation Amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

provided further, that each Holder of Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Common Securities and its consequences if all Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated, and until such Events of Default have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. Subject to the foregoing provisions of this Section 2.6(b), upon such waiver, any such Default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Trust Agreement, but no such waiver shall extend to any subsequent or other Default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of an Event of Default under the Indenture by the Property Trustee, at the written direction of the Holders of the Preferred Securities, constitutes a waiver of the corresponding Event of Default under this Trust Agreement.

Section 2.7 **Event of Default; Notice.**

(a) The Property Trustee shall, within 90 days after a Responsible Officer of the Property Trustee obtains actual knowledge of the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of all Defaults with respect to the Securities actually known to a Responsible Officer of the Property Trustee, unless such Defaults have been cured before the giving of such notice; provided that, except for a Default in the payment of principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Property Trustee shall not be deemed to have actual knowledge of any Default or Event of Default except:

(i) Default or Event of Default under Sections 5.01(a) and 5.01(b) of the Indenture; or

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

(c) Within five Business Days after the occurrence of any Event of Default actually known to the Property Trustee, the Property Trustee shall transmit notice of such Event of Default to the Holders of the Preferred Securities, the Administrative Trustees and the Depositor, unless such Event of Default shall have been cured or waived.

ARTICLE III

ORGANIZATION

Section 3.1 **Name.**

The Trust is named "ServisFirst Capital Trust II", as such name may be modified from time to time by the Administrative Trustees following written notice to the Property Trustee, the Delaware Trustee and the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

Section 3.2 **Office.**

The address of the principal office of the Trust is c/o ServisFirst Bancshares, Inc., 850 Shades Creek Parkway, Suite 200, Birmingham, Alabama 35209. On 10 Business Days written notice to the Property Trustee, the Delaware Trustee and the Holders of Securities, the Administrative Trustees may designate another principal office.

Section 3.3 **Purpose.**

The exclusive purposes and functions of the Trust are (a) to issue and sell the Securities, (b) to use the gross proceeds from the sale of the Securities to acquire the Debentures, and (c) except as otherwise limited herein, to engage in only those other activities necessary, advisable or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, mortgage or pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

Section 3.4 **Authority.**

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

Section 3.5 **Title to Property of the Trust.**

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

Section 3.6 **Powers and Duties of the Administrative Trustees.**

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

- (a) to issue and sell the Preferred Securities and the Common Securities in accordance with this Trust Agreement; provided, however, that except, in the case of (i) and (ii), as contemplated in Section 7.1(a), (i) the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, (ii) there shall be no interests in the Trust other than the Securities, and (iii) the issuance of Securities shall be limited to a simultaneous issuance of both Preferred Securities and Common Securities at any Closing Time;
- (b) in connection with the issue and sale of the Preferred Securities, at the direction of the Depositor, to:
 - (i) execute, if necessary, a confidential offering memorandum (the "Confidential Offering Memorandum") in preliminary and final form, including any amendments or supplements thereto, prepared by the Depositor, in relation to the offering and sale of Preferred Securities under an exemption from the registration requirements of Section 5 of the Securities Act;

(ii) execute and file any documents prepared by the Depositor, or take any acts as determined by the Depositor to be necessary in order to qualify the offering and sale of Preferred Securities under an exemption from the registration requirements of Section 5 of the Securities Act;

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

(iv) execute and deliver letters, documents, or instruments with DTC and other Clearing Agencies relating to the Preferred Securities.

(c) to acquire the Debentures with the proceeds of the sale of the Preferred Securities and the Common Securities; provided, however, that the Administrative Trustees shall cause legal title to the Debentures to be held by the Property Trustee for the benefit of the Holders of the Preferred Securities and the Holders of Common Securities;

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

(e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Preferred Securities and Holders of Common Securities as to such actions and applicable record dates;

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

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 3.8(e), the Property Trustee has the exclusive power to bring such Legal Action;

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

- (i) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;
- (j) to act as, or appoint another Person to act as, Registrar for the Securities or to appoint a Paying Agent for the Securities as provided in Section 7.4 except for such time as such power to appoint a Paying Agent is vested in the Property Trustee;
- (k) to give prompt written notice to the Property Trustee and to Holders of the Securities of any notice received from the Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Indenture;
- (l) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing;
- (m) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Preferred Securities or to enable the Trust to effect the purposes for which the Trust was created;
- (n) to take any action, not inconsistent with this Trust Agreement or with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.6, including, but not limited to:
 - (i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;
 - (ii) causing the Trust to be classified for United States federal income tax purposes as a grantor trust; and
 - (iii) cooperating with the Debenture Issuer to ensure that the Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes; and
- (o) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Administrative Trustees, on behalf of the Trust.

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

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

Any expenses incurred by the Administrative Trustees pursuant to this Section 3.6 shall be reimbursed by the Depositor.

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

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

- (a) invest any proceeds received by the Trust from holding the Debentures, but shall distribute all such proceeds to Holders of Securities pursuant to the terms of this Trust Agreement and of the Securities;
- (b) acquire any assets other than as expressly provided herein;
- (c) possess Trust property for other than a Trust purpose;
- (d) make any loans or incur any indebtedness other than loans represented by the Debentures;
- (e) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;
- (f) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or

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

Section 3.8 **Powers and Duties of the Property Trustee.**

- (a) The legal title to the Debentures shall be held by the Property Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 5.7. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.
- (b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Administrative Trustees or to the Delaware Trustee (if the Property Trustee does not also act as Delaware Trustee).
- (c) The Property Trustee shall:
- (i) establish and maintain a segregated non-interest bearing trust account (the "Property Trustee Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Trustee Account and make, or cause any Paying Agent to make, payments to the Holders of the Preferred Securities and Holders of the Common Securities from the Property Trustee Account in accordance with Section 6.1. Funds in the Property Trustee Account shall be held uninvested until disbursed in accordance with this Trust Agreement;
 - (ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Preferred Securities and the Common Securities to the extent the Debentures are redeemed or mature; and
 - (iii) upon written notice of distribution issued by the Administrative Trustees in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities upon the occurrence of certain events.
- (d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of this Trust Agreement and the Securities.

(e) Subject to Section 3.9(a), the Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer of the Property Trustee has actual knowledge or the Property Trustee's duties and obligations under this Trust Agreement and if the Property Trustee shall have failed to take such Legal Action, the Holders of the Preferred Securities may take such Legal Action, to the same extent as if such Holders of Preferred Securities held an aggregate principal amount of Debentures equal to the aggregate Liquidation Amount of such Preferred Securities, without first proceeding against the Property Trustee or the Trust; provided, however, that if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay the principal of or premium, if any, or interest on the Debentures on the date such principal, premium, if any, or interest is otherwise payable (or in the case of redemption, on the redemption date), then a Holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder of the principal of or premium, if any, or interest on the Debentures having a principal amount equal to the aggregate Liquidation Amount of the Preferred Securities of such Holder (a "Direct Action") on or after the respective due date specified in the Debentures. In connection with such Direct Action, the rights of the Holders of the Common Securities will be subrogated to the rights of such Holder of Preferred Securities to the extent of any payment made by the Debenture Issuer to such Holder of Preferred Securities in such Direct Action. Except as provided in the preceding sentences, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Debentures.

(f) The Property Trustee shall continue to serve as a Trustee until either:

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

or

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

(g) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Debentures under the Indenture and, if an Event of Default actually known to a Responsible Officer of the Property Trustee occurs and is continuing, the Property Trustee shall, for the benefit of Holders of the Securities, enforce its rights as holder of the Debentures subject to the rights of the Holders pursuant to this Trust Agreement and the terms of the Securities. The Property Trustee must exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

(h) The Property Trustee shall be authorized to undertake any actions set forth in Section 317(a) of the Trust Indenture Act.

For such time as the Property Trustee is the Paying Agent, the Property Trustee may authorize one or more Persons to act as additional Paying Agents and to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all securities and any such Paying Agent shall comply with the provisions of Section 317(b) of the Trust Indenture Act. Any such additional Paying Agent may be removed by the Property Trustee at any time the Property Trustee remains as Paying Agent and a successor Paying Agent or additional Paying Agents may be (but are not required to be) appointed at any time by the Property Trustee.

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

The Property Trustee must exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

Section 3.9 **Certain Duties and Responsibilities of the Property Trustee.**

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

(b) No provision of this Trust Agreement shall be construed to relieve the Property Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that:

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

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

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

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Trust Agreement;

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

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

(vi) the Property Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the Debentures or the payment of any taxes or assessments levied thereon or in connection therewith;

(vii) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree in writing with the Depositor. Money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Property Trustee Account maintained by the Property Trustee pursuant to Section 3.8(c)(i) and except to the extent otherwise required by law; and

(viii) the Property Trustee shall not be responsible for monitoring the compliance by the Administrative Trustees or the Depositor with their respective duties under this Trust Agreement, nor shall the Property Trustee be liable for any default or misconduct of the Administrative Trustees, any other Trustees or the Depositor.

Section 3.10 **Certain Rights of Property Trustee.**

(a) Subject to the provisions of Section 3.9:

(i) the Property Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(ii) any direction or act of the Depositor or the Administrative Trustees contemplated by this Trust Agreement may be sufficiently evidenced by an Officers' Certificate;

(iii) whenever in the administration of this Trust Agreement, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Depositor or the Administrative Trustees;

(iv) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(v) the Property Trustee may consult with counsel or other experts of its selection and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion, such counsel may be counsel to the Depositor or any of its Affiliates, and may include any of its employees. The Property Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;

(vi) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security and indemnity, satisfactory to the Property Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Property Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such advances as may be requested by the Property Trustee; provided, that, nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Property Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Trust Agreement;

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(viii) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Property Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(ix) any action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Property Trustee to so act or as to its compliance with any of the terms and provisions of this Trust Agreement, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

(x) whenever in the administration of this Trust Agreement the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Securities as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be fully protected in conclusively relying on or acting in or accordance with such instructions;

(xi) except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement;

(xii) the Property Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith, without gross negligence, and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Trust Agreement;

(xiii) when the Property Trustee incurs expenses or renders services in connection with an Event of Default under Sections 5.01(d) or 5.01(e) of the Indenture, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally;

(xiv) in no event shall the Property Trustee be liable for the selection of investments or for investment losses incurred thereon. The Property Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any such investment prior to its stated maturity or the failure of the party directing such investment to provide timely written investment direction. The Property Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction; and

(xv) in the event that the Property Trustee is also acting as Paying Agent, Registrar or exchange agent hereunder, the rights and protections afforded to the Property Trustee pursuant to this Article Three shall also be afforded to such Paying Agent, Registrar or exchange agent.

(b) No provision of this Trust Agreement shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

Section 3.11 Delaware Trustee.

Notwithstanding any other provision of this Trust Agreement other than Section 5.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Administrative Trustees or the Property Trustee described in this Trust Agreement. Except as set forth in Section 5.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Statutory Trust Act and taking such actions as are required to be taken by the Delaware Trustee under the Statutory Trust Act. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder, the Delaware Trustee shall be entitled to the benefits of Section 3.9(b)(ii) through (vii) and Section 3.10. No implied covenants or obligations shall be read into this Trust Agreement against the Delaware Trustee.

Section 3.12 Execution of Documents.

Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Statutory Trust Act, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.6.

Section 3.13 Not Responsible for Recitals or Issuance of Securities.

The recitals contained in this Trust Agreement and the Securities shall be taken as the statements of the Depositor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Trust Agreement or the Securities.

Section 3.14 **Duration of Trust.**

The Trust, unless terminated pursuant to the provisions of Article VIII hereof, shall have existence up to March 15, 2041 (the "Expiration Date").

Section 3.15 **Mergers.**

(a) The Trust may not merge or convert with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, except as described in Section 3.15(b) and (c).

(b) The Trust may, at the request of the Depositor, with the consent of the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Property Trustee, merge or convert with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to, a trust organized as such under the laws of any State; provided that:

(i) such successor entity (the "Successor Entity") either:

(A) expressly assumes all of the obligations of the Trust under the Securities; or

(B) substitutes for the Securities other securities having substantially the same terms as the Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Securities rank with respect to Distributions and payments upon liquidation, redemption and otherwise;

(ii) the Depositor expressly appoints a trustee of the Successor Entity that possesses substantially the same powers and duties as the Property Trustee as the holder of the Debentures;

(iii) the Successor Securities are listed or quoted, or any Successor Securities will be listed or quoted upon notification of issuance, on any national securities exchange or with another organization on which the Preferred Securities are then listed or quoted, if any;

(iv) such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;

(v) such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of such Holders' interests in the new entity);

(vi) such Successor Entity has a purpose substantially identical to that of the Trust;

(vii) prior to such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Depositor has received an opinion of an independent counsel to the Trust experienced in such matters to the effect that:

(A) such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of the Holders' interest in the new entity);

(B) following such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor the Successor Entity will be required to register as an Investment Company under the Investment Company Act; and

(C) following such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer, or lease, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes; and

(viii) the Depositor or any permitted successor or assignee owns all of the common securities of such Successor Entity and guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Preferred Securities Guaranty.

(c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of all Holders of the Securities in liquidation amount of the Securities, consolidate, amalgamate, merge or convert with or into, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to, any other Person or permit any other Person to consolidate, amalgamate, merge or convert with or into, or replace it if such consolidation, amalgamation, merger, conversion, replacement, conveyance, transfer or lease would cause the Trust or the Successor Entity not to be classified as a grantor trust for United States federal income tax purposes.

(d) The Administrative Trustees shall furnish to the Delaware Trustee at least five Business Days prior notice of the consummation of any merger, consolidation, amalgamation, or replacement; provided, however, that failure to provide such notice shall not effect the validity of any such transaction.

ARTICLE IV

SPONSOR

Section 4.1 **Depositor's Purchase of Common Securities.**

At the Closing Time, the Depositor will purchase all of the Common Securities then issued by the Trust at the same time as the Preferred Securities are issued and sold.

Section 4.2 **Responsibilities of the Depositor.**

In connection with the issue and sale of the Preferred Securities, the Depositor shall have the exclusive right and responsibility to engage in the following activities:

- (a) to prepare the Confidential Offering Memorandum, including any amendments or supplements thereto;
- (b) to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Depositor deems necessary or advisable in order to comply with any exemption from the registration requirements of Section 5 of the Securities Act; and
- (c) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such States.

Section 4.3 **Right to Proceed.**

The Depositor acknowledges the rights of the Holders of Preferred Securities, in the event that a failure of the Trust to pay Distributions on the Preferred Securities is attributable to the failure of the Company to pay interest or principal on the Debentures, to institute Direct Actions against the Debenture Issuer for enforcement of its payment obligations on the Debentures.

ARTICLE V

TRUSTEES; CONVERSION AGENT

Section 5.1 **Number of Trustees: Appointment of Co-Trustee.**

The number of Trustees initially shall be four, and:

(a) at any time before the issuance of any Securities, the Depositor may, by written instrument, increase or decrease the number of Trustees; and

(b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; provided, however, that, the number of Trustees shall in no event be less than two; provided further, that (1) one Trustee shall be the Delaware Trustee; (2) there shall be at least one Trustee who is an employee or officer of, or is affiliated with the Depositor (an "Administrative Trustee"); and (3) one Trustee shall be the Property Trustee, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements. Notwithstanding the above, unless an Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the requirements hereof or of any legal requirements of any jurisdiction in which any part of the Trust's property may at the time be located, the Holders of a Majority in Liquidation Amount of the Common Securities acting as a class at a meeting of the Holders of the Common Securities, and the Administrative Trustees shall have power to appoint one or more Persons either to act as a co-trustee, jointly with the Property Trustee, of all or any part of the Trust's property, or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons in such capacity any property, title, right or power deemed necessary or desirable, subject to the provisions of this Trust Agreement. In case an Event of Default has occurred and is continuing, the Property Trustee alone shall have power to make any such appointment of a co-trustee.

Section 5.2 **Delaware Trustee.**

If required by the Statutory Trust Act, one Trustee (the "Delaware Trustee") shall be:

(a) a natural person who is a resident of the State of Delaware; or

(b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law,

provided that, if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application to the Property Trustee in its capacity as Property Trustee.

Section 5.3 **Property Trustee; Eligibility.**

(a) There shall at all times be one Trustee (the "Property Trustee") which shall act as Property Trustee and which shall:

(i) not be an Affiliate of the Depositor; and

(ii) be a corporation or national banking association organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S. \$50,000,000, and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation or national banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.3(a)(ii), the combined capital and surplus of such corporation or national banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.3(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 5.7(c).

(c) If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holder of the Common Securities (as if it were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

(d) The Preferred Securities Guaranty shall be deemed to be specifically described in this Trust Agreement for purposes of clause (i) of the first provision contained in Section 310(b) of the Trust Indenture Act.

(e) The initial Property Trustee shall be:

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration

Section 5.4 **Certain Qualifications of Administrative Trustees and Delaware Trustee Generally.**

Each Administrative Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

Section 5.5 **Administrative Trustees.**

(a) The initial Administrative Trustees shall be:

Thomas A. Broughton III
c/o ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209

William M. Foshee
c/o ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209

(b) Except as expressly set forth in this Trust Agreement and except if a meeting of the Administrative Trustees is called with respect to any matter over which the Administrative Trustees have power to act, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee.

(c) Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents which the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.6; and

(d) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.6.

Section 5.6 **Delaware Trustee.**

The initial Delaware Trustee shall be:

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration

Section 5.7 **Appointment, Removal and Resignation of Trustees.**

(a) Subject to Section 5.7(b), any Trustee may be appointed or removed without cause at any time:

(i) until the issuance of any Securities, by written instrument executed by the Depositor;

(ii) in the case of Administrative Trustees, after the issuance of any Securities, by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities;

(iii) in the case of the Property Trustee and the Delaware Trustee, unless an Event of Default shall have occurred and be continuing after the issuance of any Securities, by vote of the Holders of a Majority in Liquidation Amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; and

(iv) in the case of the Property Trustee and the Delaware Trustee, if an Event of Default shall have occurred and be continuing after the issuance of the Securities, by vote of Holders of a Majority in Liquidation Amount of the Preferred Securities voting as a class at a meeting of Holders of the Preferred Securities.

(b) (i) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.7(a) until a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.3 (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the removed Property Trustee, the Administrative Trustees and the Depositor; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with this Section 5.7(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.2 and 5.4 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the removed Delaware Trustee, the Administrative Trustees and the Depositor.

(c) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Depositor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; provided, however, that:

(i) No such resignation of the Trustee that acts as the Property Trustee shall be effective:

- (A) until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Administrative Trustees, the Depositor and the resigning Property Trustee; or
- (B) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Administrative Trustees, the Depositor and the resigning Delaware Trustee.

(d) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Property Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.7.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.7 within 60 days after delivery of an instrument of resignation or removal, the Property Trustee or Delaware Trustee resigning or being removed, as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(f) No Property Trustee or Delaware Trustee shall be liable for the acts or omissions of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.

Section 5.8 **Vacancies Among Trustees.**

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees, shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.7.

Section 5.9 **Effect of Vacancies.**

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in accordance with Section 5.7, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Trust Agreement.

Section 5.10 **Meetings.**

If there is more than one Administrative Trustee, meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any in-person meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before such meeting. Notice of any telephonic meetings of the Administrative Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of an Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where an Administrative Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Trust Agreement, any action of the Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting by the written consent of the Administrative Trustees. In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee.

Section 5.11 **Delegation of Power.**

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.6, including any confidential offering memorandum or amendment thereto; and

(b) The Administrative Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

Section 5.12 **Merger, Conversion, Consolidation or Succession to Business.**

Any Person into which the Property Trustee or the Delaware Trustee or any Administrative Trustee that is not a natural person, as the case may be, may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of such Trustee, shall be the successor of such Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided such Person shall be otherwise qualified and eligible under this Article.

Section 5.13 **Appointment of Conversion Agent.**

The Conversion Agent shall convert the Preferred Securities in accordance with Annex I hereto. The Administrative Trustees may revoke such power and remove the Conversion Agent if such Trustees determine in their sole discretion that the Conversion Agent shall have failed to perform its obligations under this Trust Agreement in any material respect. The Conversion Agent shall initially be the Debenture Trustee, and any co-paying agent chosen by the Debenture Trustee, and acceptable to the Administrative Trustees and the Depositor. Any Person acting as Conversion Agent shall be permitted to resign as Conversion Agent upon 30 days' written notice to the Administrative Trustees, the Property Trustee and the Depositor. In the event that the Debenture Trustee shall no longer be the Conversion Agent or a successor Conversion Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor that is acceptable to the Property Trustee and the Depositor to act as conversion Agent (which shall be a bank or trust company). The provisions of Sections 3.6 through 3.15 and Article X of this Trust Agreement shall apply to any Conversion Agent appointed hereunder, *mutatis mutandis*, and any Conversion Agent shall be bound by the requirements with respect to conversion agents of securities issued pursuant to the Trust Indenture Act. Any reference in this Trust Agreement to the Conversion Agent shall include any co-paying agent unless the context requires otherwise.

ARTICLE VI

DISTRIBUTIONS

Section 6.1 **Distributions.**

Each Holder shall receive Distributions in accordance with the applicable terms of such Holder's Securities. If and to the extent that the Debenture Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Sums (as defined in the Indenture)), premium and/or principal or any other payments on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose, to make a distribution (a "Distribution") of the Payment Amount to Holders in accordance with the respective terms of the Securities held by them (each date on which distributions are payable in accordance with this Section 6.1, a "Distribution Date").

ARTICLE VII

ISSUANCE OF SECURITIES

Section 7.1 General Provisions Regarding Securities.

(a) The Administrative Trustees shall on behalf of the Trust issue one class of Preferred Securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Annex I (the "Preferred Securities") and one class of common securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Annex I (the "Common Securities"). The Trust shall issue no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities. The initial minimum amount of the Preferred Securities that may be purchased by a Holder in the initial offering is \$20,000 and integral multiples of \$5,000 in excess thereof. Thereafter, Preferred Securities may be issued in multiples of \$5,000.

(b) The Preferred Securities rank *pari passu* and payment thereon shall be made Pro Rata (as defined in Annex I hereto) with the Common Securities except that, where an Event of Default has occurred and is continuing, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Preferred Securities.

(c) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(d) Upon issuance of the Securities as provided in this Trust Agreement, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(e) Every Person, by virtue of having become a Holder in accordance with the terms of this Trust Agreement, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Trust Agreement.

Section 7.2 Execution and Authentication.

The Securities shall be signed on behalf of the Trust by an Administrative Trustee. Such signature may be by manual or facsimile signature. Typographical and other minor errors or defects in any reproduction of any such signature shall not affect the validity of any Security. In case any Administrative Trustee who shall have signed any of the Securities shall cease to be such Administrative Trustee before the Securities so signed shall be delivered by the Trust, such Securities nevertheless may be delivered as though the Person who signed such Securities had not ceased to be such Administrative Trustee; and any Securities may be signed on behalf of the Trust by such Persons who, at the actual date of execution of such Security, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Trust Agreement any such Person was not such an Administrative Trustee.

A Common Security shall be valid upon execution by an Administrative Trustee without any act of the Property Trustee. A Preferred Security shall not be valid until authenticated by the manual signature of an authorized officer of the Property Trustee. The signature shall be conclusive evidence that the Preferred Security has been authenticated under this Trust Agreement.

Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee shall authenticate the Preferred Securities for original issue. The aggregate number of Preferred Securities outstanding at any time shall not exceed the number set forth in the Terms in Annex I hereto except as provided in Section 7.6. All Securities shall be dated the date of their authentication.

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Preferred Securities. An authenticating agent may authenticate Preferred Securities whenever the Property Trustee may do so. Each reference in this Trust Agreement to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Depositor or an Affiliate.

Section 7.3 **Form and Dating.**

(a) General.

(i) The Preferred Securities will initially be sold only to Qualified Institutional Buyers in reliance on Rule 144A under the Securities Act and to Accredited Investors in reliance on Rule 506 of Regulation D under the Securities Act. The Preferred Securities may thereafter be transferred to, among others, Qualified Institutional Buyers and Accredited Investors in each case, subject to the restrictions on transfer set forth herein.

(ii) The Preferred Securities and the Property Trustee's certificate of authentication shall be substantially in the form of Exhibit A-1 and the Common Securities shall be substantially in the form of Exhibit A-2, each of which is hereby incorporated in and expressly made a part of this Trust Agreement. Certificates representing the Securities may be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof. The Securities may have letters, CUSIP or other numbers, notations or other marks of identification or designation and such legends or endorsements required by law, stock exchange rule, agreements to which the Trust is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Administration Trustees, as evidenced by their execution thereof). The Trust at the direction of the Depositor shall furnish any such legend not contained in Exhibit A-1 to the Property Trustee in writing. Each Preferred Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Annex I and the forms of Securities set forth in Exhibits A-1 and A-2 are part of the terms of this Trust Agreement and to the extent applicable, the Property Trustee and the Depositor, by their execution and delivery of this Trust Agreement, expressly agree to such terms and provisions and to be bound thereby.

(b) Definitive Preferred Securities. All Preferred Securities shall initially be issued in the form of one or more certificates in fully registered form without Distribution coupons with the appropriate legends set forth in Exhibit A-1 hereto, which Definitive Preferred Securities shall be delivered to the purchasers thereof and registered in the name of such purchasers, duly executed by the Trust and authenticated by the Property Trustee as provided herein.

(c) Global Preferred Securities. The Preferred Securities offered and sold to Qualified Institutional Buyers may, but will not initially be, issued in the form of one or more permanent global certificates in definitive, fully registered form without Distribution coupons with the appropriate global legends set forth in Exhibit A-1 hereto (a "Global Preferred Security"), which, if and when so issued, shall be deposited on behalf of the purchasers of the Preferred Securities represented thereby with the Property Trustee or the Registrar, as custodian for the Clearing Agency, and registered in the name of the Clearing Agency or a nominee of the Clearing Agency, duly executed by the Trust and authenticated by the Property Trustee as hereinafter provided. The number of Preferred Securities represented by the Global Preferred Security may from time to time be increased or decreased by adjustments made on the records of the Property Trustee and the Clearing Agency or its nominee as hereinafter provided. Except as provided in Section 7.9, Preferred Security Beneficial Owners will not be entitled to receive physical delivery of certificated Preferred Securities (sometimes referred to herein as the "Definitive Preferred Securities").

(d) Book-Entry Provisions. In the event any Preferred Security is issued as a Global Preferred Security, the Administrative Trustees shall execute and the Property Trustee shall, in accordance with this Section 7.3, authenticate and make available for delivery initially one or more Global Preferred Securities that (i) shall be registered in the name of Cede & Co. or other nominee of such Clearing Agency and (ii) shall be delivered by the Property Trustee to such Clearing Agency or pursuant to such Clearing Agency's written instructions or held by the Property Trustee or the Registrar as custodian for the Clearing Agency.

Members of, or participants in, the Clearing Agency ("Participants") shall have no rights under this Trust Agreement with respect to any Global Preferred Security held on their behalf by the Clearing Agency or by the Property Trustee or the Registrar as the custodian of the Clearing Agency or under such Global Preferred Security, and the Clearing Agency may be treated by the Trust, the Property Trustee and any agent of the Trust or the Property Trustee as the absolute owner of such Global Preferred Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Trust, the Property Trustee or any agent of the Trust or the Property Trustee from giving effect to any written certification, proxy or other authorization furnished by the Clearing Agency or impair, as between the Clearing Agency and its Participants, the operation of customary practices of such Clearing Agency governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Security.

Section 7.4 **Registrar and Paying Agent.**

The Trust shall maintain in Wilmington, Delaware, (i) an office or agency where Preferred Securities may be presented for registration of transfer ("Registrar") and (ii) an office or agency where Preferred Securities may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Preferred Securities and of their transfer. The Trust may appoint the Registrar and the Paying Agent and may appoint one or more co-registrars, one or more additional paying agents in such other locations as it shall determine. The term "Registrar" includes any additional registrar and the term "Paying Agent" includes any additional paying agent. The Trust may change any Paying Agent, Registrar or co-registrar without prior notice to any Holder. The Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Property Trustee and the Depositor. The Trust shall notify the Property Trustee in writing of the name and address of any Agent not a party to this Trust Agreement. If the Trust fails to appoint or maintain another entity as Registrar or Paying Agent, the Property Trustee shall act as such. The Trust or any of its Affiliates may act as Paying Agent or Registrar. The Property Trustee shall act as Paying Agent and Registrar for the Common Securities.

The Trust initially appoints the Property Trustee as Registrar and Paying Agent for the Preferred Securities.

Section 7.5 **Paying Agent to Hold Money in Trust.**

The Trust shall require each Paying Agent other than the Property Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Property Trustee all money held by the Paying Agent for the payment of Liquidation Amounts or Distributions on the Securities, and will notify the Property Trustee in writing if there are insufficient funds for such purpose. While any such insufficiency continues, the Property Trustee may require a Paying Agent to pay all money held by it to the Property Trustee. The Trust at any time may require a Paying Agent to pay all money held by it to the Property Trustee and to account for any money disbursed by it. Upon payment over to the Property Trustee the Paying Agent (if other than the Trust or an Affiliate of the Trust) shall have no further liability for the money. If the Trust or the Depositor or an Affiliate of the Trust or the Depositor acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent.

Section 7.6 **Replacement Securities.**

If the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken or if such Security is mutilated and is surrendered to the Trust or in the case of the Preferred Securities to the Property Trustee, the Administrative Trustees shall execute and the Property Trustee shall authenticate a replacement Security if the Property Trustee's and the Administrative Trustees' requirements, as the case may be, are met. An indemnity bond must be provided by the Holder which, in the judgment of the Property Trustee, is sufficient to protect the Trustees, the Depositor or any authenticating agent from any loss which any of them may suffer if a Security is replaced. The Trust may charge such Holder for its expenses in replacing a Security.

Every replacement Security is an additional beneficial interest in the Trust.

Section 7.7 **Outstanding Preferred Securities.**

The Preferred Securities outstanding at any time are all the Preferred Securities authenticated by the Property Trustee except for those cancelled by it, those delivered to it for cancellation, and those described in this Section as not outstanding.

If a Preferred Security is replaced, paid or purchased pursuant to Section 7.6 hereof, it ceases to be outstanding unless the Property Trustee receives proof satisfactory to it that the replaced, paid or purchased Preferred Security is held by a bona fide purchaser.

If Preferred Securities are considered paid in accordance with the terms of this Trust Agreement, they cease to be outstanding and Distributions on them shall cease to accumulate.

Except as otherwise provided herein, a Preferred Security does not cease to be outstanding because one of the Trustees, the Depositor or an Affiliate of the Depositor holds the Security.

Section 7.8 **Preferred Securities in Treasury.**

In determining whether the Holders of the required amount of Securities have concurred in any direction, waiver or consent, Preferred Securities owned by the Trust, the Depositor or an Affiliate of the Depositor, as the case may be, shall be disregarded and deemed not to be outstanding, except that for the purposes of determining whether the Property Trustee shall be fully protected in relying on any such direction, waiver or consent, only Preferred Securities which a Responsible Officer of the Property Trustee actually knows are so owned shall be so disregarded.

Section 7.9 **Temporary Securities.**

(a) Until definitive Securities are ready for delivery, the Trust may prepare and, in the case of the Preferred Securities, the Property Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Trust considers appropriate for temporary Securities. Without unreasonable delay, the Trust shall prepare and, in the case of the Preferred Securities, the Property Trustee shall authenticate definitive Securities in exchange for temporary Securities.

(b) A Global Preferred Security deposited with the Clearing Agency or with the Property Trustee as custodian for the Clearing Agency pursuant to Section 7.3 shall be transferred to a Preferred Security Beneficial Owner thereof in the form of Definitive Preferred Securities only if such transfer complies with Section 9.2 and (i) the Clearing Agency notifies the Company that it is unwilling or unable to continue as Clearing Agency for such Global Preferred Security or if at any time such Clearing Agency ceases to be a "clearing agency" registered under the Exchange Act and a clearing agency is not appointed by the Depositor within 90 days of such notice, (ii) a Default or an Event of Default has occurred and is continuing or (iii) the Trust at its sole discretion elects to cause the issuance of Definitive Preferred Securities.

(c) Any Global Preferred Security that is transferable to the Preferred Security Beneficial Owners in the form of Definitive Preferred Securities pursuant to this Section 7.9 shall be surrendered by the Clearing Agency to the Property Trustee located in Wilmington, Delaware, to be so transferred, in whole or from time to time in part, without charge, and the Property Trustee shall authenticate and make available for delivery, upon such transfer of each portion of such Global Preferred Security, an equal aggregate Liquidation Amount of Securities of authorized denominations in the form of Definitive Preferred Securities. Any portion of a Global Preferred Security transferred pursuant to this Section shall be registered in such names as the Clearing Agency shall direct.

(d) Subject to the provisions of Section 7.9(c), the Holder of a Global Preferred Security may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which such Holder is entitled to take under this Trust Agreement or the Securities.

(e) In the event of the occurrence of any of the events specified in Section 7.9(b), the Trust will promptly make available to the Property Trustee a reasonable supply of Definitive Preferred Securities in fully registered form without Distribution coupons.

Section 7.10 Cancellation.

The Trust at any time may deliver Preferred Securities to the Property Trustee for cancellation. The Registrar and Paying Agent shall forward to the Property Trustee any Preferred Securities surrendered to them for registration of transfer, redemption, exchange or payment. The Property Trustee shall promptly cancel all Preferred Securities surrendered for registration of transfer, redemption, exchange, payment, replacement or cancellation and shall dispose of canceled Preferred Securities in accordance with its customary procedures unless any Administrative Trustee otherwise directs the Property Trustee in writing. The Trust may not issue new Preferred Securities to replace Preferred Securities that it has paid or that have been delivered to the Property Trustee for cancellation or that any Holder has exchanged.

Section 7.11 CUSIP Numbers.

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

ARTICLE VIII

TERMINATION OF TRUST

Section 8.1 Termination of Trust.

(a) The Trust shall automatically be terminated and dissolved and its affairs wound up upon the earliest to occur of the following events:

(i) upon the bankruptcy of the Depositor;

(ii) upon the filing of a certificate of dissolution or liquidation or its equivalent with respect to the Depositor, or the revocation of the Depositor's charter and the expiration of 90 days after the date of revocation without a reinstatement thereof;

(iii) following the distribution of a Like Amount of the Debentures to the Holders of the Securities, provided that, the Property Trustee has received written notice and an Officer's Certificate from the Depositor directing the Property Trustee to terminate the Trust (which direction is optional and within the discretion of the Depositor);

(iv) upon the entry of a decree of judicial dissolution of the Trust by a court of competent jurisdiction;

(v) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;

(vi) when the Property Trustee shall have delivered the Debentures (or such portion thereof as shall then be issued and outstanding) to the Conversion Agent for conversion into the Conversion Stock on the Mandatory Conversion Date; or

(vii) the expiration of the term of the Trust provided in Section 3.14.

(b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a) and the completion of the winding up of the Trust and after satisfaction of all liabilities of the Trust (whether by payment or by making reasonable provision for payment thereof), the Administrative Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 3.9 and Article X shall survive the termination of the Trust.

Section 8.2 **Liquidation.**

(a) If an event specified in clause (i), (iii) or (iv) of Section 8.1 occurs, or upon the Expiration Date, the Trust shall be liquidated by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Securityholder a Like Amount of Debentures, subject to Section 8.2(d). Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid mailed not later than 30 nor more than 90 days prior to the date upon which the Trust is liquidated (the "Liquidation Date") to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All notices of liquidation shall:

(i) state the Liquidation Date;

(ii) state that from and after the Liquidation Date the Trust Securities will no longer be deemed to be Outstanding and any Preferred Securities certificates and/or Common Securities certificates not surrendered for exchange will be deemed to represent a Like Amount of Debentures; and

(iii) provide such information with respect to the mechanics by which Holders may exchange Preferred Securities certificates and/or Common Securities certificates for Debentures, or if Section 8.2(d) applies receive a Liquidation Distribution, as the Administrative Trustees or the Property Trustee shall deem appropriate.

(b) Except where Section 8.1(a)(v) or 8.2(d) applies, in order to effect the liquidation of the Trust and distribution of the Debentures to Securityholders, the Property Trustee, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Debentures in exchange for the Outstanding Preferred Securities certificates and/or the Outstanding Common Securities certificates.

(c) Except where Section 8.1(a)(v) or 8.2(d) applies, after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) certificates representing a Like Amount of Debentures will be issued to holders of Preferred Securities certificates and/or Common Securities certificates, upon surrender of such certificates to the Administrative Trustees or their agent for exchange, (iii) the Depositor shall use its best efforts to have the Debentures listed on the New York Stock Exchange or on such other exchange, interdealer quotation system or self-regulator organization as the Preferred Securities are then listed, if any, (iv) any Preferred Securities certificates and/or Common Securities certificates not so surrendered for exchange will be deemed to represent a Like Amount of Debentures, accruing interest at the rate provided for in the Debentures, from the last Distribution Date on which a Distribution was made on such Preferred Securities certificates and/or Common Securities certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal will be made to Holders of Preferred Securities certificates and/or Common Securities certificates with respect to such Debentures) and (v) all rights of Securityholders holding Trust Securities will cease, except the right of such Securityholders to receive Debentures upon surrender of Preferred Securities certificates and/or Common Securities certificates.

(d) In the event that, notwithstanding the other provisions of this Section 8.2, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Debentures in the manner provided herein is determined by the Property Trustee not to be practical, the property of the Trust shall be liquidated, and the Trust shall be dissolved, wound-up or terminated, by the Property Trustee in such manner as the Property Trustee determines. In such event on the date of the dissolution, winding-up or other termination of the Trust, Securityholders will be entitled to receive out of the assets of the Trust available for distribution to Securityholders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If, upon any such dissolution, winding up or termination, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a pro rata basis (based upon Liquidation Amounts). The holder of the Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution, winding-up or termination pro rata (determined as aforesaid) with Holders of Preferred Securities, except that, if a Debenture Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities. Any such determination and liquidation by the Property Trustee shall be conclusive upon the Securityholders and the Property Trustee shall have no liability in connection therewith.

ARTICLE IX

TRANSFER OF INTERESTS

Section 9.1 **Transfer of Securities.**

(a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Trust Agreement and in the terms of the Securities. Any transfer or purported transfer of any Security not made in accordance with this Trust Agreement shall be null and void.

(b) Subject to this Article IX, Preferred Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Trust Agreement and in the terms of the Preferred Securities, and upon submission by the transferor of a duly executed Transfer Certificate, in the form attached hereto as Exhibit B and, upon transfer to an Accredited Investor, a letter in the form of Exhibit C hereto. If a Holder that is a Qualified Institutional Buyer has an interest in a Global Preferred Security and wishes to transfer its interest therein to an Accredited Investor that is not a Qualified Institutional Buyer, such Accredited Investor transferee must take delivery of such interest in the form of an interest in a Definitive Preferred Security, and the Property Trustee shall effect the transfer in accordance with the procedures set forth in this Article IX and shall make the appropriate adjustment on its books and records and on the Preferred Security Ownership Interest Table set forth as Schedule A to the Global Preferred Security. If an Accredited Investor or Qualified Institutional Buyer who is the holder of a Definitive Preferred Security wishes to transfer their interest therein to a Qualified Institutional Buyer, and such Qualified Institutional Buyer wishes to take delivery of such interest in the form of a Global Preferred Security and the Administrative Trustees approve in writing the delivery as a Global Preferred Security, the Property Trustee shall effect the transfer in accordance with the procedures set forth in this Article IX, and shall make the appropriate adjustment on its books and records and on the Preferred Security Ownership Interest Table set forth as Schedule A to the Global Preferred Security.

(c) Subject to Section 3.15, the Depositor and any Related Party may only transfer the Common Securities to the Depositor or a Related Party after the delivery to the Property Trustee of an Officers' Certificate certifying that the transferee is either the Depositor or a Related Party.

(d) The Property Trustee shall provide for the registration of Securities and of the transfer of Securities, which will be effected without charge but only upon payment (with such indemnity as the Property Trustee may require) in respect of any tax or other governmental charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Securities, the Administrative Trustees shall execute and the Property Trustee shall cause one or more new Securities to be issued in the name of the designated transferee or transferees. Every Security surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Property Trustee duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Security surrendered for registration of transfer shall be delivered to the Property Trustee and canceled in accordance with Section 7.10. A transferee of a Security shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Security. By acceptance of a Security, each transferee shall be deemed to have agreed to be bound by this Trust Agreement.

Section 9.2 Transfer Procedures and Restrictions.

(a) Transfer and Exchange of Definitive Preferred Securities When Definitive Preferred Securities are presented to the Registrar or co-Registrar:

(i) to register the transfer of such Definitive Preferred Securities, or

(ii) to exchange such Definitive Preferred Securities which became mutilated, destroyed, defaced, stolen or lost, for an equal number of Definitive Preferred Securities,

the Registrar or co-Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Definitive Preferred Securities surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Property Trustee and the Registrar or co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(b) Restrictions on Transfer of a Definitive Preferred Security for a Beneficial Interest in a Global Preferred Security A Definitive Preferred Security may not be exchanged for a beneficial interest in a Global Preferred Security except upon satisfaction of the requirements set forth below and written approval thereof by the Administrative Trustees. Upon receipt by the Property Trustee of a Definitive Preferred Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Property Trustee, together with written instructions directing the Property Trustee to make, or to direct the Clearing Agency to make, an adjustment on its books and records with respect to the appropriate Global Preferred Security to reflect an increase in the number of the Preferred Securities represented by such Global Preferred Security and further receipt of written approval thereof by the Administrative Trustees, then the Property Trustee shall cancel such Definitive Preferred Security and cause, or direct the Clearing Agency to cause, the aggregate number of Preferred Securities represented by the appropriate Global Preferred Security to be increased accordingly. If no Global Preferred Securities are then outstanding, the Trust shall issue and the Property Trustee shall authenticate, upon written order of any Administrative Trustee, an appropriate number of Preferred Securities in global form.

(c) Transfer and Exchange of Global Preferred Securities Subject to Section 9.2(d), the transfer and exchange of Global Preferred Securities or beneficial interests therein shall be effected through the Clearing Agency, in accordance with this Trust Agreement (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Clearing Agency therefor.

(d) Transfer of a Beneficial Interest in a Global Preferred Security for a Definitive Preferred Security

(i) Any Person having a beneficial interest in a Global Preferred Security may upon request, but only upon 20 days' prior notice to the Property Trustee, and if accompanied by the information specified below, exchange such beneficial interest for a Definitive Preferred Security representing the same number of Preferred Securities. Upon receipt by the Property Trustee from the Clearing Agency, or its nominee on behalf of any Person having a beneficial interest in a Global Preferred Security, of written instructions or such other form of instructions as is customary for the Clearing Agency, or the Person designated by the Clearing Agency as having such a beneficial interest in a Preferred Security, and a certification from the transferor (in a form substantially similar to that attached hereto as the "Form of Assignment" in Exhibit A-1), which may be submitted by facsimile, then the Property Trustee will cause the aggregate number of Preferred Securities represented by Global Preferred Securities to be reduced on its books and records and, following such reduction, the Trust will execute and the Property Trustee will authenticate and make available for delivery to the transferee a Definitive Preferred Security;

(ii) Definitive Preferred Securities issued in exchange for a beneficial interest in a Global Preferred Security pursuant to this Section 9.2(d) shall be registered in such names and in such authorized denominations as the Clearing Agency, pursuant to instructions from its Participants or indirect participants or otherwise, shall instruct the Property Trustee in writing. The Property Trustee shall deliver such Preferred Securities to the Persons in whose names such Preferred Securities are so registered in accordance with such instructions of the Clearing Agency.

(e) Restrictions on Transfer and Exchange of Global Preferred Securities Notwithstanding any other provisions of this Trust Agreement (other than the provisions set forth in subsection (g) of this Section 9.2), a Global Preferred Security may not be transferred as a whole except by the Clearing Agency to a nominee of the Clearing Agency or another nominee of the Clearing Agency or by the Clearing Agency or any such nominee to a successor Clearing Agency or a nominee of such successor Clearing Agency.

(f) Authentication of Definitive Preferred Securities. If at any time Global Preferred Securities are outstanding:

(i) there occurs a Default or an Event of Default which is continuing,

(ii) the Depositor, in its sole discretion, notifies the Property Trustee in writing that it elects to cause the issuance of Definitive Preferred Securities under this Trust Agreement, or

(iii) the Trust is required to exchange such Global Preferred Securities for Definitive Preferred Securities as described in Section 7.9(b),

then the Trust will execute, and the Property Trustee, upon receipt of a written order of the Trust signed by one Administrative Trustee requesting the authentication and delivery of Definitive Preferred Securities to the Persons designated by the Trust, will authenticate and make available for delivery Definitive Preferred Securities, equal in number to the number of Preferred Securities represented by the Global Preferred Securities, in exchange for such Global Preferred Securities.

(g) Cancellation or Adjustment of Global Preferred Security. At such time as all beneficial interests in a Global Preferred Security have either been exchanged for Definitive Preferred Securities to the extent permitted by this Trust Agreement or redeemed, repurchased or canceled in accordance with the terms of this Trust Agreement, such Global Preferred Security shall be canceled by the Property Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Preferred Security is exchanged for Definitive Preferred Securities, Preferred Securities represented by such Global Preferred Security shall be reduced and an adjustment shall be made on the books and records of the Property Trustee (if it is then the custodian for such Global Preferred Security) with respect to such Global Preferred Security, by the Property Trustee or the Securities custodian, to reflect such reduction.

(h) Obligations with Respect to Transfers and Exchanges of Preferred Securities

(i) To permit registrations of transfers and exchanges, the Trust shall execute and the Property Trustee shall authenticate Definitive Preferred Securities and Global Preferred Securities at the Registrar's or co-Registrar's request in accordance with the terms of this Trust Agreement.

(ii) Registrations of transfers or exchanges will be effected without charge, but only upon payment (with such indemnity as the Trust, the Property Trustee or the Depositor may require) in respect of any tax or other governmental charge that may be imposed in relation to it.

(iii) The Registrar or co-registrar shall not be required to register the transfer of or exchange (a) Preferred Securities during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption or any notice of selection of Preferred Securities for redemption and ending at the close of business on the day of such mailing; or (b) any Preferred Security so selected for redemption in whole or in part, except the unredeemed portion of any Preferred Security being redeemed in part.

(iv) Prior to the due presentation for registrations of transfer of any Preferred Security, the Trust, the Property Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the Person in whose name a Preferred Security is registered as the absolute owner of such Preferred Security for the purpose of receiving Distributions on such Preferred Security and for all other purposes whatsoever, and none of the Trust, the Property Trustee, the Paying Agent, the Registrar or any co-registrar shall be affected by notice to the contrary.

(v) All Preferred Securities issued upon any registration of transfer or exchange pursuant to the terms of this Trust Agreement shall evidence the same security and shall be entitled to the same benefits under this Trust Agreement as the Preferred Securities surrendered upon such registration of transfer or exchange.

(i) No Obligation of the Property Trustee.

(i) The Property Trustee shall have no responsibility or obligation to any Preferred Security Beneficial Owner, a Participant in the Clearing Agency or other Person with respect to the accuracy of the records of the Clearing Agency or its nominee or of any Participant thereof, with respect to any ownership interest in the Preferred Securities or with respect to the delivery to any Participant, Preferred Security Beneficial Owner or other Person (other than the Clearing Agency) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Preferred Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Clearing Agency or its nominee in the case of a Global Preferred Security). The rights of Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency subject to the applicable rules and procedures of the Clearing Agency. The Property Trustee may conclusively rely and shall be fully protected in relying upon information furnished by the Clearing Agency or any agent thereof with respect to its Participants and any Preferred Security Beneficial Owners.

(ii) The Property Trustee and Registrar shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Trust Agreement or under applicable law with respect to any transfer of any interest in any Preferred Security (including any transfers between or among Clearing Agency Participants or Preferred Security Beneficial Owners) 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 Trust Agreement, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 9.3 Deemed Security Holders.

The Trustees may treat the Person in whose name any Security shall be registered on the books and records of the Property Trustee as the sole owner of such Security for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Security on the part of any Person, whether or not the Trustees shall have actual or other notice thereof.

Section 9.4 Restriction on Transfers.

The Securities may not be transferred unless (i) the Property Trustee receives an Opinion of Counsel satisfactory to the Property Trustee stating that such transfer is exempt from registration under applicable state and federal securities laws, will not cause the Trust to be an "Investment Company" or under the "control" of an "Investment Company" within the meaning of the Investment Company Act of 1940, as amended, and otherwise complies with the restrictions on transfer contained in this Trust Agreement, (ii) the transferee certifies to the Property Trustee that it is not (x) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to the provisions of Title 1 of ERISA, (y) a plan described in Section 4975(e)(1) of the Code or (z) any entity whose underlying assets include plan assets by reason of a plan's investment in the Trust (each a "Benefit Plan") and (iii) the Property Trustee receives the duly completed documents as required by Section 9.1(b) hereof. By accepting and holding a Security the transferee thereof shall be deemed to have represented and warranted that it is not a Benefit Plan. The Property Trustee shall have no obligation to determine whether or not a transferee of a Security is or is not a Benefit Plan.

Section 9.5 Book Entry Interests.

Global Preferred Securities, if any, shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of the Clearing Agency, and no Preferred Security Beneficial Owner will receive a definitive Preferred Security certificate (a "Preferred Security Certificate") representing such Preferred Security Beneficial Owner's interests in such Global Preferred Securities, except as provided in Section 9.2. Unless and until definitive, fully registered Preferred Securities certificates have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.2:

(a) the provisions of this Section 9.5 shall be in full force and effect;

(b) the Trust and the Property Trustee and the Administrative Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Trust Agreement (including the payment of Distributions on the Global Preferred Securities and receiving approvals, votes or consents hereunder) as the Holder of the Preferred Securities and the sole holder of the Global Certificates and shall have no obligation to the Preferred Security Beneficial Owners;

(c) to the extent that the provisions of this Section 9.5 conflict with any other provisions of this Trust Agreement, the provisions of this Section 9.5 shall control; and

(d) the rights of the Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants.

Section 9.6 Notices to Clearing Agency.

Whenever a notice or other communication to the Preferred Security Holders is required under this Trust Agreement, the Trustees shall give all such notices and communications specified herein to be given to the Holders of Global Preferred Security to the Clearing Agency, and shall have no notice obligations to the Preferred Security Beneficial Owners.

Section 9.7 Appointment of Successor Clearing Agency.

If any Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities, the Administrative Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Preferred Securities.

ARTICLE X

**LIMITATION OF LIABILITY OF
HOLDERS OF SECURITIES, TRUSTEES OR OTHERS**

Section 10.1 Liability.

(a) Except as expressly set forth in this Trust Agreement, the Preferred Securities Guaranty and the terms of the Securities, the Depositor shall not be:

(i) personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities which shall be made solely from assets of the Trust; and

(ii) be required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.

(b) The Depositor shall be liable for all of the fees, expenses, debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.

(c) Pursuant to Section 3803(a) of the Statutory Trust Act, the Holders of the Preferred Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

Section 10.2 Exculpation.

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Trust Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

Section 10.3 **Fiduciary Duty.**

(a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Trust Agreement shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between any Covered Persons; or

(ii) whenever this Trust Agreement or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

each Covered Person or Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Trust Agreement or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or otherwise.

(c) Whenever in this Trust Agreement an Indemnified Person is permitted or required to make a decision:

(i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Trust Agreement or by applicable law.

Section 10.4 **Indemnification.**

(a) (i) The Depositor shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Company Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Trust, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(ii) The Depositor shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees and expenses) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(iii) To the extent that a Company Indemnified Person shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a), or in defense of any claim, issue or matter therein, he shall be indemnified, to the full extent permitted by law, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(iv) Any indemnification under paragraphs (i) and (ii) of this Section 10.4(a) (unless ordered by a court) shall be made by the Depositor only as authorized in the specific case upon a determination that indemnification of the Company Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Administrative Trustees by a majority vote of a quorum consisting of such Administrative Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Common Security Holder of the Trust.

(v) Expenses (including attorneys' fees and expenses) incurred by a Company Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a) shall be paid by the Depositor in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Depositor as authorized in this Section 10.4(a). Notwithstanding the foregoing, no advance shall be made by the Depositor if a determination is reasonably and promptly made (i) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (iii) the Common Security Holder of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the Common Security Holder at the time such determination is made, such Company Indemnified Person acted in bad faith or in a manner that such Person did not believe to be in or not opposed to the best interests of the Trust, or, with respect to any criminal proceeding, that such Company Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Administrative Trustees, independent legal counsel or Common Security Holder reasonably determine that such Person deliberately breached his duty to the Trust or its Common or Preferred Security Holders.

(vi) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 10.4(a) shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the Depositor or Preferred Security Holders of the Trust or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 10.4(a) shall be deemed to be provided by a contract between the Depositor and each Company Indemnified Person who serves in such capacity at any time while this Section 10.4(a) is in effect. Any repeal or modification of this Section 10.4(a) shall not affect any rights or obligations then existing.

(vii) The Depositor or the Trust may purchase and maintain insurance on behalf of any Person who is or was a Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Depositor would have the power to indemnify him against such liability under the provisions of this Section 10.4(a).

(viii) For purposes of this Section 10.4(a), references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any Person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 10.4(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(ix) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 10.4(a) shall, unless otherwise provided when authorized or ratified, continue as to a Person who has ceased to be a Company Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a Person.

(b) The Depositor agrees to indemnify the (i) Property Trustee, (ii) the Delaware Trustee, (iii) any Affiliate of the Property Trustee or the Delaware Trustee, and (iv) any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Property Trustee or the Delaware Trustee (each of the Persons in (i) through (iv) being referred to as a "Fiduciary Indemnified Person") for, and to hold each Fiduciary Indemnified Person harmless against, any and all loss, liability, damage, claim or expense including taxes (other than taxes based on the income of such Fiduciary Indemnified Person) incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 10.4(b) shall survive the resignation or removal of the Property Trustee or the Delaware Trustee and the satisfaction and discharge of this Trust Agreement.

(c) The Depositor agrees to pay the Property Trustee and the Delaware Trustee, from time to time, such compensation for all services rendered by the Property Trustee and the Delaware Trustee hereunder including reasonable compensation expenses and disbursements as of its agents and counsel as may be mutually agreed upon in writing by the Depositor and the Property Trustee or the Delaware Trustee, as the case may be, and, except as otherwise expressly provided herein, to reimburse the Property Trustee and the Delaware Trustee upon its or their request for all reasonable expenses, disbursements and advances incurred or made by the Property Trustee or the Delaware Trustee, as the case may be, in accordance with the provisions of this Trust Agreement, except any such expense, disbursement or advance as may be attributable to its or their gross negligence or bad faith. No Depositor may claim any liens or charge on any Trust Property as a result of any amount due pursuant to this Section 10.4.

Section 10.5 **Outside Businesses.**

Any Covered Person, the Depositor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Trust Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Depositor, the Delaware Trustee, or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Depositor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Depositor or any Affiliate of the Depositor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Depositor or its Affiliates.

ARTICLE XI

ACCOUNTING

Section 11.1 **Fiscal Year.**

The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

Section 11.2 **Certain Accounting Matters.**

(a) At all times during the existence of the Trust, the Administrative Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year of the Trust by a firm of independent certified public accountants registered with the PCAOB selected by the Administrative Trustees.

(b) The Administrative Trustees shall cause to be prepared and delivered to each of the Holders of Securities, within 90 days after the end of each Fiscal Year of the Trust, annual financial statements of the Trust, including a balance sheet of the Trust as of the end of such Fiscal Year, and the related statements of income or loss.

(c) The Administrative Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement, required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Administrative Trustees shall endeavor to deliver all such information statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Administrative Trustees shall cause to be duly prepared and filed with the appropriate taxing authority, an annual United States federal income tax return, on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Administrative Trustees on behalf of the Trust with any state or local taxing authority.

Section 11.3 Banking.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; provided, however, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; provided, however, that the Property Trustee shall designate the signatories for the Property Trustee Account.

Section 11.4 Withholding.

The Trust and the Administrative Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrative Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to Distributions or allocations to any Holder, the amount withheld shall be deemed to be a Distribution in the amount of the withholding to the Holder. In the event of any claimed over withholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

ARTICLE XII

AMENDMENTS AND MEETINGS

Section 12.1 **Amendments.**

(a) Except as otherwise provided in this Trust Agreement or by any applicable terms of the Securities, this Trust Agreement may only be amended by a written instrument approved and executed by:

- (i) the Administrative Trustees (or if there are more than two Administrative Trustees a majority of the Administrative Trustees);
- (ii) if the amendment affects the rights, powers, duties, obligations or immunities of the Property Trustee, the Property Trustee; and
- (iii) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee, the Delaware Trustee.

(b) No amendment shall be made, and any such purported amendment shall be void and ineffective:

(i) unless, in the case of any proposed amendment, the Property Trustee shall have first received an Officers' Certificate from each of the Trust and the Depositor that such amendment is permitted by, and conforms to, the terms of this Trust Agreement (including the terms of the Securities);

(ii) unless, in the case of any proposed amendment which affects the rights, powers, duties, obligations or immunities of the Property Trustee, the Property Trustee shall have first received:

(A) an Officers' Certificate from each of the Trust and the Depositor that such amendment is permitted by, and conforms to, the terms of this Trust Agreement (including the terms of the Securities); and

(B) an opinion of counsel (who may be counsel to the Depositor or the Trust) that (x) such amendment is permitted by, and conforms to, the terms of this Trust Agreement (including the terms of the Securities) and (y) all conditions precedent to the execution and delivery of such amendment have been satisfied,

provided, however, that the Property Trustee shall not be required to sign any such amendment, and

(iii) to the extent the result of such amendment would be to:

- (A) cause the Trust to fail to continue to be classified for purposes of United States federal income taxation as a grantor trust;
- (B) reduce or otherwise adversely affect the powers of the Property Trustee in contravention of the Trust Indenture Act; or
- (C) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(c) At such time after the Trust has issued any Securities that remain outstanding, any amendment that would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only with such additional requirements as may be set forth in the terms of such Securities;

(d) Section 10.1(c) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities;

(e) Article IV shall not be amended without the consent of the Holders of a Majority in Liquidation Amount of the Common Securities;

(f) The rights of the Holders of the Common Securities under Article V to increase or decrease the number of, and appoint and remove Trustees shall not be amended without the consent of the Holders of a Majority in Liquidation Amount of the Common Securities; and

(g) Notwithstanding Section 12.1(c), this Trust Agreement may be amended without the consent of the Holders of the Securities to:

(i) cure any ambiguity, correct or supplement any provision in this Trust Agreement that may be inconsistent with any other provision of this Trust Agreement or to make any other provisions with respect to matters or questions arising under this Trust Agreement which shall not be inconsistent with the other provisions of the Trust Agreement; and

(ii) to modify, eliminate or add to any provisions of the Trust Agreement to such extent as shall be necessary to (A) ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding, (B) to ensure that the Trust will not be required to register as an Investment Company under the Investment Company Act, or (C) to ensure that the proceeds from the sale of the Securities will constitute "Tier 1 capital" under capital adequacy requirements which may be applicable to the Depositor;

provided, however, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of the Holders of the Securities, and any amendments of this Trust Agreement shall become effective when notice thereof is given to the Holders of the Securities.

Section 12.2 Meetings of the Holders of Securities; Action by Written Consent.

(a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Trust Agreement, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of at least 10% in Liquidation Amount of such class of Securities. Such direction shall be given by delivering to the Administrative Trustees one or more notices in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Security Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of Securities:

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least seven days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Trust Agreement or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in Liquidation Amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Administrative Trustees may specify that any written ballot submitted to the Security Holder for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrative Trustees;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing it. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(iii) each meeting of the Holders of the Securities shall be conducted by the Administrative Trustees or by such other Person that the Administrative Trustees may designate; and

(iv) unless the Statutory Trust Act, this Trust Agreement, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Preferred Securities are then listed or trading, otherwise provides, the Administrative Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

ARTICLE XIII

REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

Section 13.1 **Representations and Warranties of Property Trustee.**

The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Depositor at the date of this Trust Agreement, and each Successor Property Trustee represents and warrants to the Trust and the Depositor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(a) The Property Trustee is a Delaware banking corporation with trust powers and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Trust Agreement;

(b) The execution, delivery and performance by the Property Trustee of this Trust Agreement has been duly authorized by the Property Trustee. This Trust Agreement has been duly executed and delivered by the Property Trustee and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law); and

(c) The execution, delivery and performance of this Trust Agreement by the Property Trustee does not conflict with or constitute a breach of the charter or by-laws of the Property Trustee.

Section 13.2 **Representations and Warranties of Delaware Trustee.**

The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Depositor at the date of this Trust Agreement, and each Successor Delaware Trustee represents and warrants to the Trust and the Depositor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

(a) The Delaware Trustee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, or is a national banking association, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Trust Agreement;

(b) The execution, delivery and performance by the Delaware Trustee of this Trust Agreement has been duly authorized by all necessary corporate action on the part of the Delaware Trustee and does not conflict with or constitute a breach of the charter or by-laws of the Delaware Trustee. This Trust Agreement has been duly executed and delivered by the Delaware Trustee and constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law);

(c) No consent, approval or authorization of, or registration with or notice to, any federal or Delaware banking authority is required for the execution, delivery or performance by the Delaware Trustee of this Trust Agreement; and

(d) The Delaware Trustee is a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 **Notices.**

All notices provided for in this Trust Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) if given to the Trust, in care of the Administrative Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Holders of the Securities):

ServisFirst Capital Trust II
c/o ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209
Attention: Thomas A. Broughton III
Telecopy: (205) 949-0303

(b) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as Delaware Trustee may give notice of to the Holders of the Securities):

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration
Telecopy: (302) 636-4145

(c) if given to the Property Trustee, at the Property Trustee's mailing address set forth below (or such other address as the Property Trustee may give notice of to the Holders of the Securities):

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration
Telecopy: (302) 636-4145

(d) if given to the Holder of the Common Securities, at the mailing address of the Depositor set forth below (or such other address as the Holder of the Common Securities may give notice to the Trust):

ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209
Attention: Thomas A. Broughton III
Telecopy: (205) 949-0303

(c) if given to any other Holder, at the address set forth on the books and records of the Registrar.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

Section 14.2 Governing Law.

This Trust Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

Section 14.3 Intention of the Parties.

It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Trust Agreement shall be interpreted to further this intention of the parties.

Section 14.4 Headings.

Headings contained in this Trust Agreement are inserted for convenience of reference only and do not affect the interpretation of this Trust Agreement or any provision hereof.

Section 14.5 Successors and Assigns.

Whenever in this Trust Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Trust Agreement by the Depositor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether or not so expressed.

Section 14.6 Partial Enforceability.

If any provision of this Trust Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 14.7 **Counterparts.**

This Trust Agreement may contain more than one counterpart of the signature page and this Trust Agreement may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed as of the day and year first above written.

/s/ Thomas A. Broughton III
Thomas A. Broughton III, solely in his capacity as
Administrative Trustee

/s/ William M. Foshee
William M. Foshee, solely in his capacity as
Administrative Trustee

WILMINGTON TRUST COMPANY, not in its
individual capacity but solely in its capacity as
Delaware Trustee

By: /s/ Christopher J. Slaybaugh
Authorized Officer

WILMINGTON TRUST COMPANY, not in its
individual capacity but solely in its capacity as
Property Trustee

By: /s/ Christopher J. Slaybaugh
Authorized Officer

SERVISFIRST BANCSHARES, INC.,
as Depositor

By: /s/ Thomas A. Broughton III
Name: Thomas A. Broughton III
Title: President and Chief Executive Officer

ANNEX I

**TERMS OF THE
6.0% PREFERRED SECURITIES AND
6.0% COMMON SECURITIES**

Pursuant to Section 7.1 of the Amended and Restated Trust Agreement, dated as of March 15, 2010 (as amended from time to time, the "Trust Agreement"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities and the Common Securities (collectively, the "Securities") are set out below (each capitalized term used but not defined herein has the meaning set forth in the Trust Agreement or, if not defined in such Trust Agreement, as defined in the Indenture):

1. Designation and Number.

(a) Preferred Securities. Up to 15,000 Preferred Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of \$15,000,000 and each with a liquidation amount with respect to the assets of the Trust of \$1,000 per security (the "Preferred Liquidation Amount"), are hereby designated for the purposes of identification only as "6.0% Preferred Securities" (the "Preferred Securities"). The certificates evidencing the Preferred Securities shall be substantially in the form of Exhibit A-1 to the Trust Agreement, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange or quotation system on which the Preferred Securities are listed or quoted. The initial minimum amount of the Preferred Securities that may be purchased by a Holder in the initial offering is \$20,000 and integral multiples of \$5,000 in excess thereof. Thereafter, Preferred Securities may be issued in multiples of \$5,000.

(b) Common Securities. Up to 50,000 Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of \$50,000 and a liquidation amount with respect to the assets of the Trust of \$1 per security (the "Common Liquidation Amount" and, together with the Preferred Liquidation Amount, the "Liquidation Amount"), are hereby designated for the purposes of identification only as "6.0% Common Securities" (the "Common Securities"). The certificates evidencing the Common Securities shall be substantially in the form of Exhibit A-2 to the Trust Agreement, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

(a) During the Interest Period, distributions payable on each Security will be fixed at a rate per annum of 6.0% (the "Coupon Rate") of the Liquidation Amount. The "Interest Period" means the period commencing on March 15, 2010 and ending on March 15, 2040. Distributions in arrears for more than one quarterly period will bear additional distributions thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions", as used herein, includes distributions of any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds on hand legally available therefor.

(b) Distributions on the Securities will be cumulative, will accumulate from the most recent date to which Distributions have been paid or, if no Distributions have been paid, from March 15, 2010, and will be payable quarterly in arrears on June 15, September 15, December 15 and March 15 of each year, commencing on June 15, 2010, except as otherwise described below. The amount of Distributions payable for any period will be computed on the basis of the actual number of days elapsed over a 360-day year of twelve 30-day months. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date shall be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date (each date on which Distributions are payable in accordance with the foregoing, each a "Distribution Date," correspond to the interest payment dates on the Debentures). As long as no Event of Default has occurred and is continuing under the Indenture, the Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 20 consecutive quarterly periods, including the first such quarterly period during such period (each an "Extension Period"), provided that no Extension Period shall extend beyond the stated maturity date of the Debentures (the "Stated Maturity"). Upon any such election, Distributions will be deferred during such Extension Period. Notwithstanding such deferral, Distributions to which Holders of Securities are entitled shall continue to accumulate with additional Distributions thereon (to the extent permitted by applicable law but not at a rate greater than the rate at which interest is then accruing on the Debentures) at the Coupon Rate compounded quarterly from the relevant Distribution Date, during any such Extension Period. Prior to the expiration of any such Extension Period, the Debenture Issuer may further defer payments of interest by further extending such Extension Period; provided that such Extension Period, together with all such previous and further extensions within such Extension Period, may not exceed 20 consecutive quarterly periods, including the first quarterly period during such Extension Period, or extend beyond the Stated Maturity of the Debentures. Upon the expiration of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

(c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Registrar at the close of business on the 15th day (whether or not a Business Day) next preceding the relevant Distribution Date. Subject to any applicable laws and regulations and the provisions of the Trust Agreement, each such payment in respect of the Preferred Securities will be made as follows: (i) if the Preferred Securities are held in global form by a Clearing Agency (or its nominee), in accordance with the procedures of the Clearing Agency; and (ii) if the Preferred Securities are held in definitive form by check mailed or wired to the address of the Holder thereof as reflected in the records of the Registrar unless otherwise agreed by the Trust. The relevant record dates for the Common Securities shall be the same as the record dates for the Preferred Securities. Distributions payable on any Securities that are not punctually paid on any Distribution Date, as a result of the Debenture Issuer having failed to make a payment under the Debentures, will cease to be payable to the Holder on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture.

(d) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata (as defined herein) pursuant to Section 8 among the Holders of the Securities.

3. **Liquidation Distribution upon Dissolution.**

In the event of any termination of the Trust or the Depositor otherwise gives notice of its election to liquidate the Trust pursuant to Section 8.1(a)(iii) of the Trust Agreement, the Trust shall be liquidated by the Administrative Trustees as expeditiously as the Administrative Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to the Holders of the Securities a Like Amount (as defined below) of the Debentures, unless such distribution is determined by the Property Trustee not to be practicable, in which event such Holders will be entitled to receive out of the assets of the Trust legally available for distribution to Holders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the aggregate of the Liquidation Amount of the Securities plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution").

"Like Amount" means (i) with respect to a redemption of the Securities, Securities having a Liquidation Amount equal to the principal amount of Debentures to be paid in accordance with their terms and (ii) with respect to a distribution of Debentures upon the liquidation of the Trust, Debentures having a principal amount equal to the Liquidation Amount of the Securities of the Holder to whom such Debentures are distributed.

If, upon any such liquidation, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets on hand legally available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis as set forth in Section 8.

4. **Redemption and Distribution.**

(a) Upon the repayment of the Debentures on the Stated Maturity thereof or prepayment thereof prior thereto in accordance with the terms thereof, the proceeds from such repayment or prepayment shall be simultaneously applied by the Property Trustee (subject to the Property Trustee having received notice no later than 45 days prior to such repayment or prepayment) to redeem a Like Amount of the Securities at a redemption price equal to 100% of the Liquidation Amount of the Securities, plus accumulated and unpaid Distributions thereon, if any, to the date of such redemption (the "Redemption Price"). Holders will be given not less than 30 nor more than 60 days' notice of such redemption.

(b) [Reserved.]

(c) If at any time a Capital Event, a Tax Event or an Investment Company Event (each as defined below, and each a "Special Event") occurs, the Debenture Issuer shall have the right (subject to the conditions set forth in the Indenture), upon not less than 30 nor more than 60 days' notice, to the Property Trustee to prepay the Debentures in whole, but not in part, within the 90 days following the occurrence of such Special Event (the "90 Day Period"), and, simultaneous with such redemption, to cause a Like Amount of the Securities to be redeemed by the Trust at the Redemption Price on a Pro Rata basis.

"Capital Event" means the receipt by the Company and the Trust of an opinion of Haskell Slaughter Young & Rediker, LLC, or any other independent bank regulatory counsel experienced in such matters, to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any rules, guidelines or policies of the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or any other federal bank regulatory agency or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement or decision is announced on or after the date the Subordinated Debentures are issued by the Company to the Trust pursuant to the Indenture (the "Issue Date"), (i) the Company is or within 90 days will be subject to capital adequacy requirements and such requirements do not or will not permit the Preferred Securities to constitute, subject to limitations on inclusion of the Preferred Securities as Tier 1 capital imposed by Federal Reserve capital guidelines in effect and applicable to the Company as of the date of the Confidential Offering Memorandum, Tier 1 capital (or its then-equivalent) or (ii) the amount of net proceeds received from the sale of the Preferred Securities and contributed by the Company to ServisFirst Capital Trust II does not or within 90 days will not constitute Tier 1 (core) capital (or its then-equivalent).

"Tax Event" means the receipt by the Depositor and the Trust of an Opinion of Counsel, requested by the Depositor, (a "Tax Event Opinion") experienced in such matters to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein, or as a result of any official administrative written decision or pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is made on or after the Issue Date, there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days following the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Debentures, (ii) interest payable by the Debenture Issuer on the Debentures is not, or within 90 days following the date of such opinion, will not be, deductible by the Debenture Issuer, in whole or in part, for United States federal income tax purposes, or (iii) the Trust is, or will be within 90 days following the date of such opinion, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

"Investment Company Event" means the receipt by the Depositor and the Trust of an opinion, requested by the Depositor of counsel experienced in practice under the Investment Company Act, to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in Investment Company Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an "investment company" which is required to be registered under the Investment Company Act, which Change in Investment Company Act Law becomes effective on or after the Issue Date.

(d) On and from the date fixed by the Administrative Trustees for any distribution of Debentures and liquidation of the Trust: (i) the Securities will no longer be deemed to be outstanding, (ii) the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee), as the Holder of the Preferred Securities, will receive a registered global certificate or certificates representing the Debentures to be delivered upon such distribution and (iii) any certificates representing Securities not held by the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee) will be deemed to represent beneficial interests in a Like Amount of Debentures until such certificates are presented to the Administrative Trustees or their agent for cancellation, whereupon the Debenture Issuer will issue to such holder, and the Debenture Trustee will authenticate, a certificate representing such Debentures.

(e) The procedure with respect to redemptions of Securities, or distributions of Debentures in exchange therefor, shall be as follows:

(i) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected on a pro rata basis (as determined in accordance with paragraph 8 below), or by such other method as the Property Trustee deems fair and appropriate, not more than 60 days prior to the date of redemption by the Property Trustee from the outstanding Securities not previously called for redemption or, if the Preferred Securities are then held in the form of a Global Preferred Security, in accordance with the customary procedures for the Clearing Agency.

(ii) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for repayment or prepayment of the Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 4(e)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the books and records of the Registrar. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, (which notice will be irrevocable), then (A) with respect to Preferred Securities registered in the name of or held of record by a Clearing Agency or its nominee, by 12:00 noon, New York City time, on the redemption date, and Debentures have been presented provided that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related maturity or prepayment of the Debentures by 10:00 a.m., New York City time, on the Stated Maturity or the date of prepayment, as the case may be, the Property Trustee will deposit irrevocably with the Clearing Agency or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to such Preferred Securities and will give the Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the relevant Clearing Agency Participants, and (B) with respect to Preferred Securities issued in certificated form and Common Securities, provided that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related maturity or prepayment of the Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Securities by check mailed or wired to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required and Debentures have been presented, if applicable, then immediately prior to the close of business on the date of such deposit, or on the redemption date, as applicable, Distributions will cease to accumulate on the Securities so called for redemption and all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on such Redemption Price, and such Securities shall cease to be outstanding.

(iv) Payment of accumulated and unpaid Distributions on the Redemption Date of the Securities will be subject to the rights of Holders of Securities on the close of business on a regular record date in respect of a Distribution Date occurring on or prior to such Redemption Date.

(v) Neither the Administrative Trustees nor the Trust shall be required to register or cause to be registered the transfer of (i) any Securities beginning on the opening of business 15 days before the day of mailing of a notice of redemption or any notice of selection of Securities for redemption or (ii) any Securities selected for redemption. If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid either by the Property Trustee or the Paying Agent or by the Depositor as guarantor pursuant to the Preferred Securities Guaranty, Distributions on such Securities will continue to accumulate from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(vi) Redemption/Distribution Notices shall be sent by the Property Trustee on behalf of the Trust to (A) in respect of the Preferred Securities, the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Preferred Security Certificates have been issued, to the Holder thereof, and (B) in respect of the Common Securities to the Holder thereof.

(vii) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws and banking laws), the Depositor or any of its Affiliates may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

5. **Mandatory and Optional Conversion.**

(a) (i) To the extent not previously redeemed or converted into shares of Conversion Stock pursuant to Section 5(b) below, all Preferred Securities will automatically and mandatorily convert into shares of Company Common Stock on the Mandatory Conversion Date at the Conversion Price (as defined in Section 5(c) below).

(ii) In order to effect such mandatory conversion, upon delivery of the Preferred Securities then issued and outstanding to the Trustee by the Conversion Agent on the Mandatory Conversion Date, the Trust will terminate and the Property Trustee, on behalf of the Trust, will deliver all of the Debentures then issued and outstanding to the Conversion Agent on the Mandatory Conversion Date. The Conversion Agent shall cause the Debenture Trustee to convert the Debentures into Company Common Stock at the Conversion Price. The Conversion Agent shall thereupon distribute such Conversion Stock to the Holders of record of the Preferred Securities pro rata in accordance with the liquidation value of the Preferred Securities owned by each respective Holder of record as of the 15th day prior to the Mandatory Conversion Date (which shall be the record date with respect to the Mandatory Conversion Date), together with any accrued but unpaid Distributions through and including the Mandatory Conversion Date subject to any necessary regulatory approvals.

(b) (i) Any Holder of Preferred Securities may elect, at any time prior to (but not including) a Redemption Date or the Mandatory Conversion Date, to convert such Preferred Securities (in whole or in part) for conversion into shares of Company Common Stock at the Conversion Price; provided, however, that a Holder of Preferred Securities surrendering less than all Preferred Securities held by such Holder for conversion must surrender such Preferred Securities in increments of \$5,000 in liquidation amount of Preferred Securities or any integral multiple thereof.

(ii) A Holder desiring to effect such a voluntary conversion must submit to the Conversion Agent an irrevocable request to convert Preferred Securities on behalf of such Holder (a "Conversion Request"), together with (if the Preferred Securities are held in certificated form) the certificate(s) representing the Preferred Securities to be converted. The Conversion Request shall be in the form contained in the certificates representing Preferred Securities or otherwise prescribed by the Conversion Agent.

(iii) Upon receipt of a properly completed and executed Conversion Request, (A) the Conversion Agent will surrender the Preferred Securities to be converted to the Property Trustee, who will in turn cause the Debenture Trustee to exchange such Preferred Securities for a corresponding amount of Debentures; (B) the Debenture Trustee will convert such Debentures into shares of Company Common Stock at the Conversion Price; and (c) the Conversion Agent will distribute such Conversion Stock to the Holder who surrendered Preferred Securities for conversion.

(iv) Distributions accruing between Distribution Dates shall not be paid on Preferred Securities that are converted pursuant to this Section 5(b), nor shall any payment, allowance or adjustment be made for accumulated and unpaid Distributions, whether or not in arrears, on converted Preferred Securities, except that if any Preferred Security is converted on or after a record date for payment of Distributions thereon and prior to the related Distribution Date, the amount of the Distributions payable on the related Distribution Date with respect to such Preferred Security shall be paid by the converting Holder to the Trust and the Distributions payable on the related Distribution Date with respect to such Preferred Security shall be distributed to the Holder on such record date, despite such conversion. The Depositor shall make no payment or allowance for distributions on the shares of Conversion Stock issued upon such conversion, except to the extent that such shares of Conversion Stock are held of record on the record date for any such distributions and except as provided in Section 17.3 of the Indenture. Preferred Securities shall be deemed to have been converted immediately prior to the close of business on the day on which a Conversion Request relating to such Preferred Securities is received by the Trust in accordance with the foregoing provisions of this Section 5(b) (the "Conversion Date"). The Person or Persons entitled to receive the Conversion Stock shall be treated for all purposes as the record holder or holders of such Conversion Stock at such time. As promptly as practicable on or after the Conversion Date, the Depositor shall issue and deliver at the office of the Conversion Agent a certificate or certificates for the number of full shares of Conversion Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share calculated by multiplying the fractional interest by the Conversion Price) to the Person or Persons entitled to receive the same herein, unless otherwise directed by the Holder in the Conversion Request, and the Conversion Agent shall distribute such certificate or certificates to such Person or Persons.

(v) Upon delivery of a Conversion Request with respect to Preferred Securities, such Preferred Securities (and the related amount of Debentures) will represent only the right to receive the appropriate amount of Conversion Stock (and any accrued but unpaid Distributions through the record date for Distributions most recently preceding, but not including, the date of the Conversion Notice); provided, however, that if the Conversion Notice is rejected by the Conversion Agent for any reason (e.g., failure to complete all required information), the relevant Preferred Securities and Debentures shall remain outstanding unless an until a Conversion Notice in proper form is received and accepted by the Conversion Agent.

(c) The Preferred Securities shall be convertible at the office of the Conversion Agent into fully paid and nonassessable shares of Company Common Stock upon the Mandatory Conversion Date, or pursuant to the Holder's delivery of a Conversion Notice, together with (if the Preferred Securities are held in certificated form) the certificate representing the Preferred Security to be converted, in proper form to the Conversion Agent, at an initial conversion ratio provided for in the Indenture of 40 shares of Company Common Stock per \$1,000 liquidation value of Preferred Securities or principal amount of Debentures, representing a conversion price of \$25.00 per share of Conversion Stock issued, subject to certain adjustments set forth in the terms of the Indenture (as so adjusted, the "Conversion Price"). The Conversion Agent shall deliver the shares of Conversion Stock to the converting Holder (or such other Person or Persons as the converting Holder may permissibly designate) free and clear of all liens, charges, security interests and encumbrances, except for United States withholding taxes.

(d) Each Holder of a Preferred Security by acceptance thereof appoints the Conversion Agent as such Holder's agent for the purpose of effecting the conversion of Trust Securities in accordance with this Section 5. In effecting the conversion and transactions described in Section 5(b), the Conversion Agent shall be acting as agent of the Holder directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (i) to exchange Preferred Securities from time to time for Debentures held by the Trust in connection with the conversion of such Preferred Securities under this Section 5, and (ii) to convert all or a portion of the Debentures into Company Common Stock and thereupon to deliver such shares of Conversion Stock in accordance with the provisions of this Section 5 and to deliver to the Trust a new Debenture or Debentures for any resulting unconverted principal amount.

(e) The Depositor shall pay any and all taxes that may be payable in respect of the issue or delivery of shares of Conversion Stock hereunder. The Depositor shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issue and delivery of shares of Conversion Stock in a name other than that in which the Preferred Securities so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Trust the amount of any such tax or has established to the satisfaction of the Trust that it has been paid.

(f) Nothing in this Section 5 shall (1) limit the requirements of the Trust to withhold taxes pursuant to the terms of the Trust Securities or as set forth in this Trust Agreement or (2) otherwise require the Property Trustee, the Delaware Trustee or the Trust to pay any amount on account of such withholdings.

6. **Voting Rights - Preferred Securities.**

(a) Except as provided under Sections 6(b) and 8 and as otherwise required by law and the Trust Agreement, the Holders of the Preferred Securities will have no voting rights.

(b) So long as any Debentures are held by the Property Trustee, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on such Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 5.07 of the Indenture, (iii) exercise any right to rescind or annul a declaration of acceleration of the maturity of the principal of the Debentures or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of a Majority in Liquidation Amount of all outstanding Preferred Securities; provided, however, that where a consent under the Indenture would require the consent of each holder of Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior approval of each Holder of the Preferred Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities except by subsequent vote of such Holders. The Property Trustee shall notify each Holder of Preferred Securities of any notice of default with respect to the Debentures. In addition to obtaining the foregoing approvals of such Holders of the Preferred Securities, prior to taking any of the foregoing actions, the Trustees shall obtain an opinion of counsel experienced in such matters to the effect that the Trust will not be classified as an association taxable as a corporation for United States federal income tax purposes on account of such action.

If an Event of Default under the Trust Agreement has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay principal of or premium, if any, or interest on the Debentures on any due date (including any Interest Payment Date or prepayment date or Stated Maturity), then a Holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder of the principal of or premium, if any, or interest on a Like Amount of Debentures (a "Direct Action") on or after the respective due date specified in the Debentures. In connection with such Direct Action, the rights of the Common Securities Holder will be subrogated to the rights of such Holder of Preferred Securities to the extent of any payment made by the Debenture Issuer to such Holder of Preferred Securities in such Direct Action. Except as provided in the second preceding sentence, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Debentures.

Any approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Property Trustee will cause a notice of any meeting at which Holders of Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consent.

No vote or consent of the Holders of the Preferred Securities will be required for the Trust to redeem and cancel Preferred Securities or to distribute the Debentures in accordance with the Trust Agreement and the terms of the Securities.

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities that are owned by the Depositor or any Affiliate of the Depositor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

7. Voting Rights - Common Securities.

(a) Except as provided under Sections 7(b), 7(c) and 8 as otherwise required by law and the Trust Agreement, the Holders of the Common Securities will have no voting rights.

(b) Unless a Debenture Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by the Holder of the Common Securities. If a Debenture Event of Default has occurred and is continuing, the Property Trustee and the Delaware Trustee may be removed at such time by the holders of a Majority in Liquidation Amount of the outstanding Preferred Securities. In no event will the Holders of the Preferred Securities have the right to vote to appoint, remove or replace the Administrative Trustees, which voting rights are vested exclusively in the Depositor as the holder of the Common Securities. No resignation or removal of a Trustee and no appointment of a successor trustee shall be effective until the acceptance of appointment by the successor trustee in accordance with the provisions of the Trust Agreement.

(c) So long as any Debentures are held by the Property Trustee, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on such Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 5.07 of the Indenture, (iii) exercise any right to rescind or annul a declaration of acceleration of the maturity of the principal of the Debentures or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of a Majority in Liquidation Amount of all outstanding Common Securities; provided, however, that where a consent under the Indenture would require the consent of each holder of Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior approval of each Holder of the Common Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Common Securities except by subsequent vote of such Holders. The Property Trustee shall notify each Holder of Common Securities of any notice of default with respect to the Debentures. In addition to obtaining the foregoing approvals of such Holders of the Common Securities, prior to taking any of the foregoing actions, the Trustees shall obtain an Opinion of Counsel experienced in such matters to the effect that the Trust will not be classified as an association taxable as a corporation for United States federal income tax purposes on account of such action.

If an Event of Default under the Trust Agreement has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay principal of or premium, if any, or interest on the Debentures on the due date (including any Interest Payment Date or prepayment date or Stated Maturity) (or in the case of redemption, on the redemption date), then a Holder of Common Securities may institute a Direct Action for enforcement of payment to such Holder of the principal of or premium, if any, or interest on a Like Amount of Debentures on or after the respective due date specified in the Debentures. In connection with Direct Action, the rights of the Holders of Preferred Securities will be subrogated to the rights of such Holder of Common Securities to the extent of any payment made by the Debenture Issuer to such Holder of Common Securities in such Direct Action. Except as provided in the second preceding sentence, the Holders of Common Securities will not be able to exercise directly any other remedy available to the holders of the Debentures.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute the Debentures in accordance with the Trust Agreement and the terms of the Securities.

8. **Amendments to Trust Agreement and Indenture.**

In addition to the requirements set out in Section 12.1 of the Trust Agreement, the Trust Agreement may be amended from time to time by the Depositor and the Trustees, without the consent of the Holders of the Securities (i) to cure any ambiguity, correct or supplement any provisions in the Trust Agreement that may be inconsistent with any other provisions, or to make any other provisions with respect to matters or questions arising under the Trust Agreement which shall not be inconsistent with the other provisions of the Trust Agreement, or (ii) to modify, eliminate or add to any provisions of the Trust Agreement to such extent as shall be necessary (A) to ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding, (B) to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act, or (C) to ensure that the proceeds from the sale of the Securities will constitute "Tier 1 capital" under capital adequacy requirements which may be applicable to the Depositor; provided, however, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of any Holder of Securities. Any amendments of the Trust Agreement pursuant to the foregoing shall become effective when notice thereof is given to the holders of the Securities. The Trust Agreement also may be amended by the Trustees and the Depositor with (i) the consent of Holders representing a Majority in Liquidation Amount of all outstanding Securities, and (ii) receipt by the Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status as an investment company under the Investment Company Act, provided that, without the consent of each Holder of Trust Securities, the Trust Agreement may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date or (ii) restrict the right of a holder of Trust Securities to institute suit for the enforcement of any such payment on or after such date.

9. **Pro Rata.**

A reference in these terms of the Securities to any payment, distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of Securities according to the aggregate Liquidation Amount of the Securities held by the relevant Holder in relation to the aggregate Liquidation Amount of all Securities outstanding unless, in relation to a payment, an Event of Default under the Trust Agreement has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate Preferred Liquidation Amount of Preferred Securities held by the relevant Holder relative to the aggregate Preferred Liquidation Amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate Common Liquidation Amount of Common Securities held by the relevant Holder relative to the aggregate Common Liquidation Amount of all Common Securities outstanding.

10. **Ranking.**

The Preferred Securities rank *pari passu* with the Common Securities and payment thereon shall be made Pro Rata with the Common Securities, except that, if an Event of Default under the Trust Agreement occurs and is continuing, no payments in respect of Distributions on, or payments upon liquidation, redemption or otherwise with respect to, the Common Securities shall be made until the Holders of the Preferred Securities shall be paid in full the Distributions, Redemption Price, Liquidation Distribution and other payments to which they are entitled at such time.

11. **Acceptance of Securities Guaranty and Indenture.**

Each Holder of Preferred Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Preferred Securities Guaranty, including the subordination provisions therein, and to the provisions of the Indenture.

12. **No Preemptive Rights.**

The Holders of the Securities shall have no preemptive rights or similar rights to subscribe for any additional securities.

13. **Miscellaneous.**

These terms constitute a part of the Trust Agreement.

The Depositor will provide a copy of the Trust Agreement, the Preferred Securities Guaranty and the Indenture (including any supplemental indenture) to a Holder without charge on written request to the Depositor at its principal place of business.

EXHIBIT A-1

FORM OF PREFERRED SECURITY CERTIFICATE

[Restricted Securities Legend]

THIS PREFERRED SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR ANY APPLICABLE STATE SECURITIES LAW. THIS PREFERRED SECURITY HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO OR FOR RESALE IN CONNECTION WITH THE DISTRIBUTION THEREOF. NO DISPOSITION OF THIS SECURITY MAY BE MADE IN THE ABSENCE OF (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) PURSUANT TO AN EXEMPTION FROM OR A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAW.

EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A OR REGULATION D THEREUNDER. EACH HOLDER OF THIS SECURITY REPRESENTS TO SERVISFIRST CAPITAL TRUST II THAT (A) SUCH HOLDER WILL NOT SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY (WITHOUT THE CONSENT OF SERVISFIRST CAPITAL TRUST II) OTHER THAN (I) TO SERVISFIRST CAPITAL TRUST II, (II) IN THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION COMPLYING WITH THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (III) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT, (IV) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT SUBJECT IN THE CASE OF CLAUSE (II), (III) OR (IV) TO THE RECEIPT BY THE REGISTRAR (AND SERVISFIRST CAPITAL TRUST II, IF IT SO REQUESTS) OF AN OPINION OF COUNSEL OR SUCH OTHER EVIDENCE ACCEPTABLE TO SERVISFIRST CAPITAL TRUST II THAT SUCH RESALE, PLEDGE OR TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (V) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, AND THAT (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY OF THE RESALE RESTRICTIONS REFERRED TO HEREIN AND DELIVER TO THE TRANSFEREE (OTHER THAN A QUALIFIED INSTITUTIONAL BUYER) PRIOR TO THE SALE A COPY OF THE TRANSFER RESTRICTIONS APPLICABLE HERETO (COPIES OF WHICH MAY BE OBTAINED FROM THE TRUSTEE).

[Certificated Securities Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[Global Securities Legend]

THIS PREFERRED SECURITY IS A GLOBAL PREFERRED SECURITY WITHIN THE MEANING OF THE TRUST AGREEMENT HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "CLEARING AGENCY") OR A NOMINEE OF THE CLEARING AGENCY. THIS PREFERRED SECURITY IS EXCHANGEABLE FOR PREFERRED SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE CLEARING AGENCY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE TRUST AGREEMENT AND NO TRANSFER OF THIS PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS PREFERRED SECURITY AS A WHOLE BY THE CLEARING AGENCY TO A NOMINEE OF THE CLEARING AGENCY OR BY A NOMINEE OF THE CLEARING AGENCY TO THE CLEARING AGENCY OR ANOTHER NOMINEE OF THE CLEARING AGENCY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

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

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OR PORTIONS OF THIS GLOBABL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE TRUST AGREEMENT.

Certificate Number

Number of Preferred Securities
CUSIP NO.

Certificate Evidencing Preferred Securities of
SERVISFIRST CAPITAL TRUST II

6.0% Preferred Securities
(Liquidation Amount \$1,000 per Preferred Security)

SERVISFIRST CAPITAL TRUST II, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that _____ (the "Holder") is the registered owner of _____ [or such other amount as is indicated on Schedule A hereto]* Preferred Securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 6.0% Preferred Securities (Liquidation Amount \$1,000 per Preferred Security) (the "Preferred Securities"). The Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Trust Agreement of the Trust dated as of March 15, 2010, as the same may be amended from time to time (the "Trust Agreement"), including the designation of the terms of the Preferred Securities as set forth in Annex I to the Trust Agreement. Capitalized terms used but not defined herein shall have the meaning given them in the Trust Agreement. The Depositor will provide a copy of the Trust Agreement, the Preferred Securities Guaranty and the Indenture to a Holder without charge upon written request to the Trust at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder and to the benefits of the Preferred Securities Guaranty to the extent provided therein.

By its acceptance hereof, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Preferred Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, an Administrative Trustee on behalf of the Trust has duly executed this certificate.

Date: _____

SERVISFIRST CAPITAL TRUST II

By: _____
Name:
Title: Administrative Trustee

* Insert in the Global Preferred Security only.

PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Preferred Securities referred to in the within-mentioned Trust Agreement.

WILMINGTON TRUST COMPANY,
as Property Trustee

By: _____
Authorized Officer

[SEAL]

[FORM OF REVERSE OF SECURITY]

During the Interest Period, Distributions payable on each Preferred Security will be fixed at a rate per annum of 6.0% (the "Coupon Rate") of the Liquidation Amount of \$1,000 per Preferred Security (the "Liquidation Amount"), such distribution rate being the rate of interest payable on the Debentures to be held by the Property Trustee. The "Interest Period" means the period commencing on the original issue date and ending on March 15, 2040.

Distributions in arrears for more than one quarterly period will bear interest thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions", as used herein, includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds on hand legally available therefor.

Distributions on the Preferred Securities will be cumulative, will accumulate from the most recent date to which Distributions have been paid or, if no Distributions have been paid, from March 15, 2010, and will be payable quarterly in arrears, on June 15, September 15, December 15 and March 15 of each year, commencing on June 15, 2010, except as otherwise described below and in the Trust Agreement. Distributions will be computed on the basis of the actual number of days elapsed over a 360-day year of 30-day months. As long as no Event of Default has occurred and is continuing under the Indenture, the Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 20 consecutive calendar quarterly periods, including the first such quarterly period during such extension period (each an "Extension Period"), provided that no Extension Period shall extend beyond the Stated Maturity of the Debentures. As a consequence of such deferral, Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accumulate with interest thereon (to the extent permitted by applicable law, but not at a rate exceeding the rate of interest then accruing on the Debentures) at the Coupon Rate compounded quarterly during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further defer payments of interest by further extending such Extension Period; provided that such Extension Period, together with all such previous and further extensions within such Extension Period, may not exceed 20 consecutive quarterly periods, including the first quarterly period during such Extension Period, or extend beyond the Stated Maturity of the Debentures. Payments of Distributions that have accumulated but not been paid during any Extension Period will be payable to Holders as they appear on the books and records of the Trust on the records of the Trust on the record date for the first scheduled Distribution Date following the expiration of such first record date after the end of the Extension Period. Upon the expiration of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

Subject to certain conditions set forth in the Trust Agreement and the Indenture, the Property Trustee shall, at the direction of the Depositor, at any time liquidate the Trust and cause the Debentures to be distributed to the holders of the Securities in liquidation of the Trust or, simultaneous with any redemption of the Debentures, cause a Like Amount of the Securities to be redeemed by the Trust.

The Preferred Securities shall be redeemable as provided in the Trust Agreement.

Any Holder has the right, exercisable at any time after issuance, and on or before the close of business on the Business Day immediately preceding the date of repayment of the Preferred Securities, whether at maturity or upon redemption, to convert the Preferred Securities held by such holder (or any portion thereof with a liquidation amount that is an integral multiple of \$5,000) into fully paid and nonassessable shares of Company Common Stock at an initial conversion price of \$25.00 per share of Company Common Stock, subject to adjustment under certain circumstances (the "Conversion Price"). The number of shares of Company Common Stock issuable upon conversion of Preferred Securities shall be determined by dividing (1) the aggregate liquidation amount of the Preferred Securities to be converted by (B) the Conversion Price. No fractional shares of Company Common Stock shall be issued upon conversion and, in lieu thereof, a cash payment shall be made for any fractional interest, based upon Conversion Price. The outstanding liquidation of any Preferred Security shall be reduced by the portion of the principal amount thereof converted into shares of Company Common Stock.

To convert a Preferred Security, a Holder must (i) complete and sign a Conversion Request substantially in the form attached hereto, (ii) surrender the Preferred Security (if in certificated form) to the Conversion Agent, (iii) furnish appropriate endorsements or transfer documents if required by the Preferred Security Registrar or Conversion Agent, and (iv) pay any transfer or similar tax, if required. If a Conversion Request is delivered on or after the regular record date and prior to the subsequent Distribution Date, the Securityholder shall be required to pay to the Company the amount of the Distribution to be made on the subsequent Distribution Date, and shall be entitled to receive the Distribution payable on the subsequent Distribution Date, on the portion of Preferred Securities to be converted notwithstanding the conversion thereof prior to such Distribution Date. Notwithstanding the foregoing, if, during an Extended Interest Payment Period, a notice of redemption is mailed pursuant to the Trust Agreement and a Preferred Security is converted after such mailing but prior to the relevant redemption date, all accrued but unpaid Distributions through the date of conversion shall be paid to the Holder on the redemption date. Except as otherwise provided in the immediately preceding two sentences, in the case of any Preferred Security which is converted, Distributions with a Distribution Date which is after the date of conversion of such Preferred Security shall not be payable, and the Trust shall not make or be required to make any other payment, adjustment or allowance with respect to accrued but unpaid Distributions on the Preferred Securities being converted, which shall be deemed to be paid in full. If any Preferred Security called for redemption is converted, any money deposited with the Debenture Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Preferred Security shall be paid to the Company upon Company request or, if then held by the Company, shall be discharged from such trust.

To the extent not previously prepaid pursuant or converted into shares of Company Stock, all Preferred Securities will automatically and mandatorily convert into shares of Company Common Stock on the Mandatory Conversion Date, March 15, 2013, at the Conversion Price.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

_____ agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: _____

Signature: _____
(Sign exactly as your name appears on the other side of this Preferred Security Certificate)

Signature Guarantee*: _____

* Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as in effect from time to time.

FORM OF CONVERSION REQUEST

To: Servisfirst Capital Trust II. and Wilmington Trust Company, or any successor Conversion Agent:

The undersigned owner of these Preferred Securities hereby irrevocably elects to convert these Securities, or the portion below designated, into Company Common Stock in accordance with the terms of the Amended and Restated Trust Agreement (the "Trust Agreement"), dated as of March 15, 2010, between ServisFirst Bancshares, Inc., and Wilmington Trust Company, as Trustee.

The undersigned owner of these Preferred Securities hereby directs the Conversion Agent to convert such Preferred Securities on behalf of the undersigned, into Company Common Stock (at the Conversion Price specified in the Trust Agreement). The undersigned owner of these Preferred Securities also hereby notifies the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, should be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. (If shares are to be issued in the name of a person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.)

Date: _____

Liquidation Amount of Preferred Securities to be converted (\$5,000 or integral multiples thereof): \$ _____

If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Company Common Stock are to be issued, along with the address or addresses of such person or persons:

(Sign exactly as your name appears on the other side of this Preferred Security)

(for conversion only)

Please print or type name and address, including zip code, and social security or other identifying number:

Name: _____

Address: _____

SSN/TIN: _____

Signature Guarantee:* _____

* Signature must be guaranteed by an eligible guarantor institution that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program (STAMP) or such other signature guarantee program as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.

SCHEDULE A

PREFERRED SECURITY OWNERSHIP INTEREST TABLE

The initial aggregate liquidation amount of the Preferred Securities evidenced by the Certificate to which this Schedule A is attached is \$ _____. The notations on the following table evidence the decreases and increases in the aggregate principal amount of the Preferred Securities evidenced by such Certificate.

Decrease in Liquidation Amount of Preferred Securities	Increase in Liquidation Amount of Preferred Securities	Liquidation Amount of Preferred Securities Remaining After Such Decrease or Increase	Notation by Registrar
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EXHIBIT A-2

FORM OF COMMON SECURITY CERTIFICATE

THIS COMMON SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR ANY APPLICABLE STATE SECURITIES LAW. THIS COMMON SECURITY HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO OR FOR RESALE IN CONNECTION WITH THE DISTRIBUTION THEREOF. NO DISPOSITION OF THIS SECURITY MAY BE MADE IN THE ABSENCE OF (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) PURSUANT TO AN EXEMPTION FROM OR A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAW.

Certificate Number

Number of Common Securities

Certificate Evidencing Common Securities
of
SERVISFIRST CAPITAL TRUST II
6.0% Common Securities
(Liquidation Amount \$1 per Common Security)

SERVISFIRST CAPITAL TRUST II, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that ServisFirst Bancshares, Inc. (the "Holder") is the registered owner of _____ common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 6.0% Common Securities (liquidation amount \$1 per Common Security) (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Trust Agreement of the Trust dated as of March 15, 2010, as the same may be amended from time to time (the "Trust Agreement"), including the designation of the terms of the Common Securities as set forth in Annex I to the Trust Agreement. Capitalized terms used but not defined herein shall have the meaning given them in the Trust Agreement. The Depositor will provide a copy of the Trust Agreement and the Indenture (including any supplemental indenture) to a Holder without charge upon written request to the Depositor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

By its acceptance hereof, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, an Administrative Trustee on behalf of the Trust has duly executed this certificate.

Date: _____

SERVISFIRST CAPITAL TRUST II

By: _____
Name: _____
Administrative Trustee

[FORM OF REVERSE OF SECURITY]

During the Interest Period, Distributions payable on each Common Security will be fixed at a rate per annum of 6.0% (the "Coupon Rate") of the liquidation amount of \$1 per Common Security (the "Liquidation Amount"), such distribution rate being the rate of interest payable on the Debentures to be held by the Property Trustee. The "Interest Period" means the period commencing on the issue date and ending on March 15, 2040.

Distributions in arrears for more than one quarterly period will bear interest thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions", as used herein, includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor.

Distributions on the Common Securities will be cumulative, will accrue from the most recent date to which Distributions have been paid or, if no Distributions have been paid, from March 15, 2010 and will be payable quarterly in arrears, on June 15, September 15, December 15 and March 15 of each year, commencing on June 15, 2010, except as otherwise described below and in the Trust Agreement. Distributions will be computed on the basis of the actual number of days elapsed over a 360-day year. As long as no Event of Default has occurred and is continuing under the Indenture, the Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 10 consecutive calendar quarterly periods, including the first such quarterly period during such extension period (each an "Extension Period"), provided that no Extension Period shall extend beyond the Stated Maturity of the Debentures. As a consequence of such deferral, Distributions will also be deferred. Despite such deferral, Distributions will continue to accumulate with interest thereon (to the extent permitted by applicable law, but not at a rate exceeding the rate of interest then accruing on the Debentures) at the Coupon Rate compounded quarterly during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further defer payments of interest by further extending such Extension Period; provided that such Extension Period, together with all such previous and further extensions within such Extension Period, may not exceed 20 consecutive quarterly periods, including the first quarterly period during such Extension Period, or extend beyond the Stated Maturity of the Debentures. Payments of Distributions that have accumulated will be payable to Holders as they appear on the books and records of the Trust on the record date for the first Distribution Date following the expiration of such Extension Period. Upon the expiration of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

Subject to certain conditions set forth in the Trust Agreement and the Indenture, the Property Trustee shall, at the direction of the Depositor, at any time liquidate the Trust and cause the Debentures to be distributed to the holders to the Securities in liquidation of the Trust or, simultaneous with any redemption of the Debentures, cause a Like Amount of the Securities to be redeemed by the Trust.

The Common Securities shall be redeemable as provided in the Trust Agreement.

THIS COMMON SECURITY MAY NOT BE TRANSFERRED EXCEPT TO SERVISFIRST BANCSHARES, INC. OR A RELATED PARTY (AS DEFINED IN THE TRUST AGREEMENT).

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

_____ agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: _____

Signature: _____
(Sign exactly as your name appears on the other side of this Common Security Certificate)

Signature Guarantee*: _____

* Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as in effect from time to time.

EXHIBIT B

FORM OF TRANSFER CERTIFICATE

In connection with any transfer of any of the Preferred Securities evidenced by this certificate, the undersigned confirms that such Preferred Securities are being:

CHECK ONE BOX BELOW

- (1) exchanged for the undersigned's own account without transfer; or
- (2) transferred to a person whom the undersigned reasonably believes to be a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), who is purchasing such Preferred Securities for such buyer's own account or the account of a "qualified institutional buyer" in a transaction meeting the requirements of Rule 144A under the Securities Act and any applicable securities laws of any state of the United States or any other jurisdiction; or
- (3) transferred to an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act pursuant to Rule 144 (and based upon an opinion of counsel if the Depositor or the Trustee so requests) and, to the knowledge of the transferor of the Preferred Securities, such accredited investor to whom such Preferred Securities are to be transferred is not an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company; or
- (4) transferred pursuant to another available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Preferred Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; provided, however, that if box (3) or (4) is checked, the Company may require, prior to registering any such transfer of the Preferred Securities, such legal opinions, certifications and other information as the Company has reasonably requested 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 the Securities Act; provided, further, that if box (2) is checked, the transferee must also certify that it is a qualified institutional buyer as defined in Rule 144A.

Signature

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Preferred Security 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, 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: _____

NOTICE: To be executed by an executive officer.

EXHIBIT C

FORM OF LETTER TO BE DELIVERED BY ACCREDITED INVESTORS

ServisFirst Capital Trust II
c/o ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209

Ladies and Gentlemen:

The undersigned is delivering this letter in connection with the prospective transfer of the 6.0% Trust Preferred Securities (the "Preferred Securities") of ServisFirst Capital Trust II, a Delaware statutory trust (the "Trust"). The undersigned understands that the Preferred Securities were issued in connection with a transaction not involving any public offering within the United States within the meaning of, or in transactions not subject to registration under, the Securities Act of 1933, as amended (the "Securities Act"), and that the Preferred Securities have not been registered under the Securities Act or any applicable state securities law.

The undersigned agrees, on its own behalf and on behalf of each account for which the undersigned may acquire any Preferred Securities, that prior to the expiration of the holding period applicable to sales of restricted securities pursuant to Rule 144 under the Securities Act, the Preferred Securities may be offered, resold, pledged or otherwise transferred only in accordance with any applicable securities laws of any state of the United States or any other applicable jurisdiction (i) (a) so long as the Preferred Securities are eligible for resale pursuant to Rule 144A, to a person the seller reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the resale, pledge or transfer is being made in reliance on Rule 144A, (b) in a transaction meeting the requirements of Rule 144 under the Securities Act, or (c) in accordance with another exemption from the registration requirements of the Securities Act, provided that in the case of a transfer, pledge or sale pursuant to this clause (c), such transfer is subject to the receipt by the registrar (and ServisFirst Bancshares, Inc (the "Company"), if it so requests) of a certification of the transferor and an opinion of counsel to the effect that such transfer is in compliance with the Securities Act, (ii) to the Company or its affiliates, (iii) pursuant to an effective registration statement under the Securities Act and (iv) in each case, in accordance with any applicable securities laws of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Preferred Securities. The undersigned further agrees to provide any person purchasing any of the Preferred Securities from the undersigned a notice advising such purchaser that resales of such Preferred Securities are restricted as stated herein. The undersigned understands that the registrar for the Preferred Securities will not be required to accept for registration of transfer any Preferred Securities, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with. The undersigned further understands that the Preferred Securities will bear a legend reflecting the substance of this paragraph.

The undersigned confirms that:

(i) the undersigned is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act (an "Accredited Investor");

(ii) any purchase of Preferred Securities by the undersigned will be for the undersigned's own account or for the account of one or more Accredited Investors or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a) under the Securities Act and for each of which the undersigned exercises sole investment discretion;

(iii) the undersigned has such knowledge and experience in financial and business matters that the undersigned is capable of evaluating the merits and risks of purchasing Preferred Securities;

(iv) the undersigned is not acquiring Preferred Securities with a view to distribution thereof or with any present intention of offering or selling Preferred Securities, except as permitted above; provided that the disposition of the undersigned's property and property of any accounts for which the undersigned is acting as fiduciary shall remain at all times within the undersigned's control; and

(v) the undersigned has received a copy of the Confidential Offering Memorandum relating to the Preferred Securities and acknowledges that the undersigned has had access to such financial and other information, and has been afforded the opportunity to ask such questions of representatives of the Company and receive answers thereto, as the undersigned deems necessary in connection with the undersigned's decision to purchase Preferred Securities.

The undersigned acknowledges that the Company, others and you will rely upon the undersigned's confirmations, acknowledgements and agreements set forth herein, and the undersigned agrees to notify you promptly in writing if any of the representations or warranties herein ceases to be accurate and complete. You are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Date: _____

(Institutional Purchaser)

OR (Individual Purchaser)

Name of Institutional Purchaser

Name:

Address:

By: _____

Name:

Title:

Address:

EXHIBIT D

CERTIFICATE TO TRUSTEE

Pursuant to Section 2.4 of the Amended and Restated Trust Agreement between ServisFirst Bancshares, Inc. as the Company (the "Company"), and Wilmington Trust Company, as Trustee, dated as of March 15, 2010 (the "Trust Agreement"), the undersigned hereby certifies as follows:

1. In my capacity as an officer of the Company, I would normally have knowledge of any default by the Company during the last fiscal year in the performance of any covenants of the Company contained in the Indenture.
2. [To my knowledge, the Company is not default in the performance of any covenants contained in the Indenture.

or, alternatively:

I am aware of the default(s) in the performance of covenants in the Indentures, as specified below.] **PLEASE PICK THE ONE THAT APPLIES and DELETE THE ONE THAT DOES NOT.**

Capitalized terms used herein, and not otherwise defined herein, have the respective meanings ascribed to thereto in the Indenture.

IN WITNESS WHEREOF, the undersigned has executed this Officers' Certificate.

Date: _____, 20__

Name:
Title:

Name:
Title:

SERVISFIRST BANCSHARES, INC.

INDENTURE

WILMINGTON TRUST COMPANY

as Trustee

6.0% JUNIOR SUBORDINATED MANDATORY CONVERTIBLE DEFERRABLE

INTEREST DEBENTURES

March 15, 2010

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INDENTURE

THIS INDENTURE, dated as of March 15, 2010, between ServisFirst Bancshares, Inc., a Delaware corporation (hereinafter sometimes called the “Company”), and Wilmington Trust Company, a Delaware banking corporation, as trustee (hereinafter sometimes called the “Trustee”).

WITNESSETH:

In consideration of the premises, and the purchase of the Securities by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Securities, as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture shall have the respective meanings specified in this Section 1.1. All other terms used in this Indenture which are defined in the Trust Indenture Act, or which are by reference therein defined in the Securities Act, shall (except as herein otherwise expressly provided or unless the context otherwise requires) have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of this Indenture as originally executed. The following terms have the meanings given to them in the Trust Agreement: (i) Clearing Agency; (ii) Delaware Trustee; (iii) Property Trustee; (iv) Administrative Trustees; (v) Distribution; (vi) Distribution Date; and (vii) Direct Action. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with GAAP. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. Headings are used for convenience of reference only and do not affect interpretation. The singular includes the plural and vice versa.

“Additional Sums” has the meaning set forth in Section 2.6(c).

“Affiliate” means, with respect to a specified Person, (a) any Person directly or indirectly owning, controlling or holding the power to vote 10% or more of the outstanding voting securities or other ownership interests of the specified Person, (b) any Person 10% or more of whose outstanding voting securities or other ownership interests are directly or indirectly owned, controlled or held with power to vote by the specified Person, (c) any Person directly or indirectly controlling, controlled by, or under common control with the specified Person, (d) a partnership in which the specified Person is a general partner, (e) any officer or director of the specified Person, and (f) if the specified Person is an individual, any entity of which the specified Person is an officer, director or general partner.

“Authenticating Agent” means any agent or agents of the Trustee which at the time shall be appointed and acting pursuant to Section 6.14.

“Bankruptcy Law” means Title 11 of the United States Code, or any similar or successor federal or state law for the relief of debtors.

“Board of Directors” means either the Board of Directors of the Company or any duly authorized committee of that board.

“Board Resolution” means a copy of a resolution 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, and delivered to the Trustee.

“Business Day” means, with respect to any series of Securities, any day other than a Saturday or a Sunday or a day on which banking institutions in The City of New York or Wilmington, Delaware are authorized or required by law or executive order to close.

“Capital Event” means the receipt by the Company and the Administrative Trustees of an opinion of Haskell Slaughter Young & Rediker, LLC, or any other independent bank regulatory counsel experienced in such matters, to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any rules, guidelines or policies of the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System (“Federal Reserve”), or any other federal bank regulatory agency or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such pronouncement or decision is announced on or after the Issue Date, (i) the Company is or within 90 days will be subject to capital adequacy requirements and such requirements do not or will not permit the Preferred Securities to constitute, subject to limitations on inclusion of the Preferred Securities as Tier 1 capital imposed by Federal Reserve capital guidelines in effect and applicable to the Company as of the date of the Confidential Offering Memorandum, Tier 1 capital (or its then-equivalent) or (ii) the amount of net proceeds received from the sale of the Preferred Securities and contributed by the Company to ServisFirst Bank does not or within 90 days will not constitute Tier 1 (core) capital (or its then-equivalent).

“Capital Leases” means, with respect to the Company or its Subsidiaries, as applicable, any lease of any property that should, in accordance with GAAP, be classified and accounted for as a capital lease on a consolidated balance sheet of the Company and its Subsidiaries.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this 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.

“Common Securities” means undivided beneficial interests in the assets of ServisFirst Capital Trust II which rank *pari passu* with Preferred Securities issued by ServisFirst Capital Trust II; provided, however, that if an Event of Default has occurred and is continuing, no payments in respect of Distributions on, or payments upon liquidation, redemption or otherwise with respect to, the Common Securities shall be made until the holders of the Preferred Securities shall be paid in full the Distributions and the liquidation, redemption and other payments to which they are entitled.

“Company” means ServisFirst Bancshares, Inc., a Delaware corporation, and, subject to the provisions of Article X, shall include its successors and assigns.

“Company Common Stock” means the common stock, part value \$.001 per share, of the Company or any other class of stock resulting from changes or reclassifications of such Common Stock consisting solely of changes in par value, or from par value to no par value, or from no par value to par value.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by the Chief Executive Officer, the President, a Vice President, the Chief Financial Officer, the Controller, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

“Compounded Interest” has the meaning set forth in Section 16.1.

“Confidential Offering Memorandum” means the Confidential Offering Memorandum related to the issuance of up to \$15,000,000 of Preferred Securities of ServisFirst Capital Trust II, dated January 15, 2010.

“Contingent Obligation” means, with respect to the Company and its Subsidiaries, without duplication, any obligation, contingent or otherwise, of any such Person pursuant to which such Person has directly or indirectly guaranteed any debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of any such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay, or to maintain financial statement condition or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, that the term Contingent Obligation shall not include (i) obligations under insurance or reinsurance policies, or (ii) endorsements for collection or deposit in the ordinary course of business.

“Conversion Agent” means the Trustee, in its capacity as Conversion Agent, or such other Conversion Agent as may be appointed by the Company under the Trust Agreement.

“Conversion Price” has the meaning set forth in Section 17.2(a).

“Conversion Stock” means one or more shares of Company Common Stock issuable upon conversion of the Preferred Securities or the Debentures.

“Coupon Rate” has the meaning set forth in Section 2.6(a).

“Custodian” means any receiver, trustee, assignee, liquidator, or similar official under any Bankruptcy Law.

“Default” means any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

“Deferred Interest” has the meaning set forth in Section 16.1.

“Definitive Securities” means those securities issued in fully registered certificated form not otherwise in global form.

“Depository” means, with respect to Securities of any series, for which the Company shall determine that such Securities will be issued as a Global Security, The Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency under the Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.5(d).

“Dissolution Event” means the liquidation of the Trust pursuant to the Trust Agreement, and the distribution of the Securities held by the Property Trustee to the holders of the Trust Securities issued by the ServisFirst Capital Trust II pro rata in accordance with the Trust Agreement.

“Event of Default” means any event specified in Section 5.1, continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Extension Period” has the meaning set forth in Section 16.1.

“Interest Period” means the period commencing on the Issue Date and ending on March 15, 2040.

“GAAP” means generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Company and its Subsidiaries throughout the period indicated and consistent with the prior financial practice of the Company and its Subsidiaries.

“Global Security” means, with respect to the Securities, a Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“Indebtedness for Money Borrowed” means any obligation of, or any obligation guaranteed by, the Company for the repayment of borrowed money, whether or not evidenced by bonds, debentures, notes or other written instruments.

“Indenture” means this instrument as originally executed or, if amended as herein provided, as so amended.

“Interest Payment Date” has the meaning set forth in Section 2.6.

“Investment Company Event” means that ServisFirst Capital Trust II and the Company shall have received an opinion, requested by the Company, of counsel experienced in practice under the Investment Company Act of 1940, as amended (the “1940 Act”), to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a “Change in 1940 Act Law”), there is more than an insubstantial risk that ServisFirst Capital Trust II is or will be considered an “investment company” which is required to be registered under the 1940 Act, which Change in 1940 Act Law becomes effective on or after the Issue Date.

“Issue Date” means March 15, 2010.

“Lien” means, with respect to any asset, any Mortgage, lien, pledge, charge, security interest or encumbrance of any kind with respect to such asset. For the purposes of this Indenture, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

“Mortgage” means and includes any mortgage, pledge, lien, security interest, conditional sale or other title retention agreement or other similar encumbrance.

“Non Book-Entry Preferred Securities” has the meaning set forth in Section 2.5.

“Officers” means any of the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer or the Secretary of the Company.

“Officers’ Certificate” means a certificate signed by two Officers and delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be an employee of the Company, and who shall be acceptable to the Trustee.

“Other Debentures” means all junior subordinated debentures issued by the Company from time to time and sold to trusts to be established by the Company (if any), in each case similar to ServisFirst Capital Trust II.

“Other Guarantees” means all guarantees to be issued by the Company with respect to capital securities (if any) and issued to other trusts to be established by the Company (if any), in each case similar to the ServisFirst Capital Trust II.

“outstanding” when used with reference to Securities, shall, subject to the provisions of Section 7.4, mean, as of any particular time, all Securities authenticated and delivered by the Trustee or an Authenticating Agent under this Indenture, except

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

(b) Securities, or portions thereof, for the payment or prepayment of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent); provided that, if such Securities, or portions thereof, are to be prepaid prior to maturity thereof, notice of such prepayment shall have been given as in Article XIV provided or provision satisfactory to the Trustee shall have been made for giving such notice; and

(c) Securities in lieu of or in substitution for which other Securities shall have been authenticated and delivered pursuant to the terms of Section 2.8 unless proof satisfactory to the Company and the Trustee is presented that any such Securities are held by bona fide holders in due course.

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

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.8 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

“Preferred Securities” means undivided beneficial interests in the assets of ServisFirst Capital Trust II which rank *pari passu* with the Common Securities issued by ServisFirst Capital Trust II; provided, however, that if an Event of Default has occurred and is continuing, no payments in respect of Distributions on, or payments upon liquidation, redemption or otherwise with respect to, the Common Securities shall be made until the holders of the Preferred Securities shall be paid in full the Distributions and the liquidation, redemption and other payments to which they are entitled.

“Preferred Securities Guaranty” means any guarantee that the Company may enter into with any Person or Persons that operate directly or indirectly for the benefit of holders of Preferred Securities of ServisFirst Capital Trust II.

“Prepayment Price” means, with respect to any prepayment of the Securities pursuant to Section 14.1 hereof, an amount in cash equal to 100% of the principal amount of the Securities to be prepaid, plus accrued and unpaid interest thereon, including Compounded Interest and Additional Sums, if any, to the date of such prepayment.

“Principal Office of the Trustee”, or other similar term, means the principal office of the Trustee, at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Indenture is located at the office of the Trustee, Wilmington Trust Company, 1100 N. Market Street, Wilmington, Delaware 19890, Attention: Corporate Trust Administration, Facsimile: 302.636.4145.

“Property Trustee” shall have the same meaning as set forth in the Trust Agreement.

“Qualified Debt Obligations” means, without duplication and other than the Securities, (a) debt securities of the Company, provided that the terms of any such debt security (i) permit the deferral of principal and interest payments for a period of up to five years (but not beyond the maturity date), as elected by the Company, (ii) have a maturity for payment of principal of not less than 10 years after the date of issuance, and (iii) include provisions making the debt security expressly subordinate to all other debt of the Company, (b) preferred securities issued by a Subsidiary, the sole purpose of which is to issue such preferred securities and invest the proceeds thereof in debt securities of the type described in clause (a) above, and which preferred securities are payable solely out of the proceeds of payments on account of such debt securities; and (c) the obligations recorded on the consolidated balance sheet of the Company and its Subsidiaries with respect to debt securities of the type described in clause (a) above and preferred securities of the type described in clause (b) above.

“Responsible Officer”, when used with respect to the Trustee, means any officer assigned to the Principal Office of the Trustee with direct responsibility for the administration of the Indenture including any managing director, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and having direct responsibility for the administration of this Indenture and also means, with respect to a particular matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“Securities” means the Company’s 6.0% Junior Subordinated Mandatory Convertible Deferrable Interest Debentures due March 15, 2040, as authenticated and issued under this Indenture.

“Securities Act” means the Securities Act of 1933, as in effect from time to time.

“Securityholder”, “holder of Securities”, or other similar terms, means any Person in whose name at the time a particular Security is registered on the register kept by the Company or the Trustee for that purpose in accordance with the terms hereof.

“Security Register” means (i) prior to a Dissolution Event, the list of holders provided to the Trustee pursuant to Section 4.1, and (ii) following a Dissolution Event, any security register maintained by a security registrar for the securities appointed by the Company following the execution of a supplemental indenture providing for transfer procedures as provided for in Section 2.7(a).

“Senior Debt” means, with respect to the Company: (a) all liabilities, obligations and indebtedness for borrowed money, whether or not evidenced by bonds, debentures, notes or other similar instruments, (b) all obligations to pay the deferred purchase price of property or services (other than trade payables due and arising in the ordinary course of business), (c) all Capital Leases, (d) all debt of any other Person secured by a Lien on any asset of the Company or any of its Subsidiaries, (e) all Contingent Obligations, and (f) all obligations, contingent or otherwise, relating to the face amount of letters of credit, whether or not drawn, and banker’s acceptance, but excluding any obligation relating to an undrawn letter of credit if the undrawn letter of credit is issued in connection with a liability for which a reserve has been established by the Company or the applicable Subsidiary in accordance with GAAP. Notwithstanding the foregoing, the term “Senior Debt” shall not include (a) the Securities, (b) the Preferred Securities Guaranty, (c) Qualified Debt Obligations, (d) to the extent any such line of credit may be in place from time to time, any working capital line of credit available to the Company in the amount of \$500,000 or any replacement indebtedness of equal dollar amount, (e) any indebtedness of the Company or any Subsidiary with the Federal Home Loan Bank or the Federal Reserve Bank; (f) any Lien incurred by any Subsidiary to collateralize deposits under the Alabama SAFE program; (g) indebtedness under or related to the Company’s 8.5% Junior Subordinated Deferrable Interest Debentures due September 1, 2038, (h) indebtedness of ServisFirst Bank (or of the Company, if any) under ServisFirst Bank’s 8.25% Subordinated Note due June 1, 2016 or (i) any trade accounts payables of the Company or any Subsidiary arising in the normal course of business.

“ServisFirst Capital Trust II” means ServisFirst Capital Trust II, a Delaware statutory trust created for the purpose of issuing its undivided beneficial interests in connection with the issuance of Securities under this Indenture.

“Special Event” means a Capital Event, a Tax Event or an Investment Company Event.

“Stated Maturity” means March 15, 2040.

“Subsidiary” means with respect to any Person, (i) any corporation at least a majority of whose outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries, (ii) any general partnership, joint venture or similar entity, at least a majority of whose outstanding partnership or similar interests shall at the time be owned by such Person, or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries and (iii) any limited partnership of which such Person or any of its Subsidiaries is a general partner. For the purposes of this definition, “voting stock” means shares, interests, participations or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of a majority of the directors (or the equivalent) of such Person, other than shares, interests, participations or other equivalents having such power only by reason of the occurrence of a contingency.

“Tax Event” means the receipt by ServisFirst Capital Trust II and the Company of an opinion, requested by the Company, of counsel experienced in such matters to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or as a result of any official administrative written decision or pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is made on or after the Issue Date, there is more than an insubstantial risk that (i) ServisFirst Capital Trust II is, or will be within 90 days of the date of such opinion, subject to United States Federal income tax with respect to income received or accrued on the Securities, (ii) interest payable by the Company on the Securities is not, or within 90 days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States Federal income tax purposes, or (iii) ServisFirst Capital Trust II is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties or other governmental charges.

“Trust” has the meaning ascribed to such term in the Trust Agreement.

“Trust Agreement” means the Amended and Restated Trust Agreement of ServisFirst Capital Trust II, dated as of March 15, 2010.

“Trust Indenture Act” means the Trust Indenture Act of 1939 as in force at the date of execution of this Indenture except as provided in Section 9.3; provided, however, that, in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” shall mean, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“Trust Securities” means the Preferred Securities and the Common Securities, collectively.

“Trustee” means the Person identified as “Trustee” in the first paragraph hereof, and, subject to the provisions of Article VI hereof, shall also include its successors and assigns as Trustee hereunder.

“U.S. Government Obligations” means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case under clauses (i) or (ii) are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

ARTICLE II

SECURITIES

Section 2.1 **Forms Generally.**

The Securities and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A, the terms of which are incorporated in and made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject or usage. Each Security shall be dated the date of its authentication. The Securities shall be issued in denominations of \$1 and in integral multiples thereof.

Section 2.2 **Execution and Authentication.**

The Securities shall be signed on behalf of the Company by the Chief Executive Officer, the President, the Chief Operating Officer or the Chief Financial Officer under corporate seal and attested by its Secretary. Any signature may be in the form of a manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee. The signature of the Trustee shall be conclusive evidence that the Security has been authenticated under this Indenture. The form of Trustee's certificate of authentication to be borne by the Securities shall be substantially as set forth in Exhibit A hereto. A Security shall be dated the date of its authentication.

The Trustee shall, upon a Company Order, authenticate for original issue up to, and the aggregate principal amount of Securities outstanding at any time may not exceed, \$15,050,000 aggregate principal amount of the Securities, except as provided in Sections 2.7, 2.8, 2.10 and 14.5.

Section 2.3 **Form and Payment.**

Except as provided in Section 2.5, the Securities shall be issued in fully registered certificated form without interest coupons. Principal of and premium, if any, and interest on the Securities issued in certificated form will be payable, the transfer of such Securities will be registrable and such Securities will be exchangeable for Securities bearing identical terms and provisions at the office or agency of the Trustee; provided, however, that payment of interest with respect to the Securities (other than Securities issued in global form, the payment of interest on which shall be made in immediately available funds) may be made at the option of the Company (i) by check mailed to the holder at such address as shall appear in the Security Register or (ii) by wire transfer to an account maintained by the Person entitled thereto, provided that proper transfer instructions have been received in writing by the relevant record date. Notwithstanding the foregoing, so long as the holder of any Securities is the Property Trustee, the payment of the principal of and premium, if any, and interest (including Compounded Interest and Additional Sums, if any) on such Securities held by the Property Trustee will be made in immediately available funds at such place and to such account as may be designated by the Property Trustee.

Section 2.4 **Legends.**

Except as otherwise determined by the Company in accordance with applicable law, each Security shall bear the applicable legends relating to restrictions on transfer pursuant to the securities laws in substantially the form set forth on Exhibit A hereto, if any.

Section 2.5 **Global Security.**

(a) In connection with a Dissolution Event,

(i) if any Preferred Securities are held in book-entry form, the related certificate representing the Preferred Securities shall be presented to the Trustee (if an arrangement with the Depository has been maintained) by the Property Trustee in exchange for one or more Global Securities (as may be required pursuant to Section 2.7) in an aggregate principal amount equal to the aggregate principal amount of all outstanding Securities held in book-entry form, to be registered in the name of the Depository, or a custodian therefor, or its nominee, and delivered by the Trustee to the Depository, or its custodian, for crediting to the accounts of its participants pursuant to the instructions of the Administrative Trustees; the Company upon any such presentation shall execute one or more Global Securities in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with this Indenture; and payments on the Securities issued as a Global Security will be made to the Depository; and

(ii) if any Preferred Securities are held in certificated form, the related Definitive Securities may be presented to the Trustee by the Property Trustee and any certificate which represents Preferred Securities other than Preferred Securities in book-entry form (“Non Book-Entry Preferred Securities”) will be deemed to represent beneficial interests in Securities presented to the Trustee by the Property Trustee having an aggregate principal amount equal to the aggregate liquidation amount of the Non Book-Entry Preferred Securities until such certificates are presented to the Security Registrar for transfer or reissuance, at which time such certificates will be cancelled and a Security, registered in the name of the holder of the certificate, with an aggregate principal amount equal to the aggregate liquidation amount of the certificate cancelled, will be executed by the Company and delivered to the Trustee for authentication and delivery in accordance with this Indenture. Upon the issuance of such Securities, Securities with an equivalent aggregate principal amount that were presented by the Property Trustee to the Trustee will be deemed to have been cancelled.

(b) The Global Securities shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon; provided, that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and prepayments. Any endorsement of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee, in accordance with instructions given by the Company as required by this Section 2.5.

(c) The Global Securities may be transferred, in whole but not in part, only to another nominee of the Depository, or to a successor Depository selected or approved by the Company or to a nominee of such successor Depository.

(d) If at any time the Depository notifies the Company that it is unwilling or unable to continue as Depository or the Depository has ceased to be a clearing agency registered under the Exchange Act, and a successor Depository is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, the Company will execute, and the Trustee, upon receipt of a Company Order, will authenticate and make available for delivery the Definitive Securities, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security. If there is an Event of Default, the Depository shall have the right to exchange the Global Securities for Definitive Securities. In addition, the Company may at any time determine that the Securities shall no longer be represented by a Global Security. In the event of such an Event of Default or such a determination, the Company shall execute, and subject to Section 2.7, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and make available for delivery the Definitive Securities, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security. Upon the exchange of the Global Security for such Definitive Securities, in authorized denominations, the Global Security shall be cancelled by the Trustee. Such Definitive Securities issued in exchange for the Global Security shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Definitive Securities to the Persons in whose names such Definitive Securities are so registered.

Section 2.6 **Interest.**

(a) During the Interest Period, each Security will bear interest at the rate of 6.0% per annum (the "Coupon Rate"). Each security will bear interest at the Coupon Rate and be paid quarterly, in arrears, on June 15, September 15, December 15 and March 15 (each, an "Interest Payment Date"), commencing on June 15, 2010, from the most recent date to which interest has been paid or, if no interest has been paid, from the Issue Date to the next Interest Payment Date (each such quarterly cycle referred to as a "Distribution Period"). Interest shall be paid for each Distribution Period, until the principal thereof becomes due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the Coupon Rate, compounded quarterly, payable (subject to the provisions of Article XVI) quarterly in arrears on each Interest Payment Date commencing on June 15, 2010. Interest shall be paid to the Person in whose name such Security or any predecessor Security is registered at the close of business on the regular record date for such interest installment, which shall be such date as is 15 days prior to the relevant Interest Payment Date.

(b) Interest will be computed on the basis of the actual number of days elapsed over a 360-day year of twelve 30-day months. In the event that any Interest Payment Date falls on a day that is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date.

(c) During such time as the Property Trustee is the holder of any Securities, the Company shall pay any additional amounts on the Securities as may be necessary in order that the amount of Distributions then due and payable by ServisFirst Capital Trust II on the outstanding Trust Securities shall not be reduced as a result of any additional taxes, duties and other governmental charges to which ServisFirst Capital Trust II has become subject as a result of a Tax Event ("Additional Sums").

Section 2.7 **Transfer and Exchange.**

(a) Transfer Restrictions. The Securities may not be transferred except in compliance with this section and any legend contained in Exhibit A, if any, unless otherwise determined by the Company in accordance with applicable law. Upon any distribution of the Securities following a Dissolution Event, the Company and the Trustee shall enter into a supplemental indenture pursuant to Section 9.1 to provide for the transfer restrictions and procedures with respect to the Securities substantially similar to those contained in the Trust Agreement, if any, to the extent applicable in the circumstances existing at such time.

(b) Conditions to Transfer. The Securities may not be transferred unless (i) the Trustee receives an Opinion of Counsel satisfactory to the Trustee stating that such transfer is exempt from registration under applicable state and federal securities laws, will not cause the Company to be an "Investment Company" or under the "control" of an "Investment Company" within the meaning of the Investment Company Act of 1940, as amended, and otherwise complies with the restrictions on transfer contained in this Indenture, and (ii) the transferee certifies to the Trustee that it is not (x) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to the provisions of Title I of ERISA, (y) a plan described in Section 4975(e)(1) of the Internal Revenue Code of 1986 as amended or (z) any entity whose underlying assets include plan assets by reason of a plan's investment in the Company (each a "Benefit Plan"). By accepting and holding a Security the transferee thereof shall be deemed to have represented and warranted that it is not a Benefit Plan. The Trustee shall have no obligation to determine whether or not a transferee of a Security is or is not a Benefit Plan. Notwithstanding the foregoing, the conditions of transfer shall not apply in the event the Securities are issued to the Holders of the Preferred Securities.

(c) General Provisions Relating to Transfers and Exchanges. To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Definitive Securities or Global Securities, as applicable. All Definitive Securities or Global Securities issued upon any registration of transfer or exchange of Definitive Securities or Global Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Definitive Securities or Global Securities surrendered upon such registration of transfer or exchange.

No service charge shall be made to a holder for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

The Company shall not be required to (i) issue or register the transfer of or exchange Securities during a period beginning at the opening of business 15 days before the day of mailing of a notice of prepayment or any notice of selection of Securities for prepayment under Article XIV hereof and ending at the close of business on the day of such mailing; or (ii) register the transfer of or exchange any Security so selected for prepayment in whole or in part, except the unprepaid portion of any Security being prepaid in part.

Prior to due presentment for the registration of a transfer of any Security, the Trustee, any agent and the Company may deem and treat the Person in whose name any Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and premium, if any, and interest on such Securities, and neither the Trustee, any agent nor the Company shall be affected by notice to the contrary.

Section 2.8 Replacement Securities.

If any mutilated Security is surrendered to the Trustee, or the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, the Company shall issue and the Trustee shall authenticate a replacement Security if the Trustee's requirements for replacements of Securities are met. An indemnity bond must be supplied by the holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee and any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Company or the Trustee may charge for its expenses in replacing a Security.

Every replacement Security is an obligation of the Company and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Securities duly issued hereunder.

Section 2.9 Treasury Securities.

In determining whether the holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or any Affiliate of the Company shall be considered as though not outstanding, except that for purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so considered.

Section 2.10 Temporary Securities.

Pending the preparation of Global Securities or Definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and make available for delivery, temporary Securities that are printed, typewritten, lithographed, mimeographed or otherwise reproduced, in any authorized denomination, substantially of the tenor of the Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company shall cause Global Securities or Definitive Securities, as applicable, to be prepared without unreasonable delay. The Global Securities or Definitive Securities shall be printed, typewritten, lithographed or engraved, or provided by any combination thereof, or in any other manner permitted by the rules and regulations of any applicable securities exchange, all as determined by the officers executing such Global Securities or Definitive Securities. After the preparation of Global Securities or Definitive Securities, the temporary Securities shall be exchangeable for Global Securities or Definitive Securities, as applicable, upon surrender of the temporary Securities at the office or agency maintained by the Company for such purpose pursuant to Section 3.2 hereof, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute, and the Trustee shall authenticate and make available for delivery, in exchange therefor the same aggregate principal amount of Global Securities or Definitive Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as Global Securities or Definitive Securities.

Section 2.11 Cancellation.

The Company at any time may deliver Securities to the Trustee for cancellation. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall retain or destroy cancelled Securities in accordance with its normal practices (subject to the record retention requirement of the Exchange Act) unless the Company directs them to be returned to it. The Company may not issue new Securities to replace Securities that have been redeemed or paid or that have been delivered to the Trustee for cancellation. All cancelled Securities not destroyed by the Trustee shall be delivered to the Company.

Section 2.12 Defaulted Interest.

Any interest on any Security that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (a) or clause (b) below:

(a) The Company may make payment of any Defaulted Interest on Securities to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in this Section 2.12(a). Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest, which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Securityholder at his or her address as it appears in the Security Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered on such special record date and shall be no longer payable pursuant to Section 2.12(b).

(b) The Company may make payment of any Defaulted Interest on any Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to Section 2.12(a), such manner of payment shall be deemed practicable by the Trustee.

Section 2.13 **CUSIP Numbers.**

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

ARTICLE III

PARTICULAR COVENANTS OF THE COMPANY

Section 3.1 Payment of Principal, Premium and Interest

The Company covenants and agrees for the benefit of the holders of the Securities that it will duly and punctually pay or cause to be paid the principal of and premium, if any, and interest on the Securities at the place, at the respective times and in the manner provided herein.

Section 3.2 Offices for Notices and Payments, etc.

So long as any of the Securities remains outstanding, the Company will maintain in Wilmington, Delaware, an office or agency where the Securities may be presented for payment, an office or agency where the Securities may be presented for registration of transfer and for exchange as in this Indenture provided and an office or agency where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served. The Company will give to the Trustee prompt written notice of the location of any such office or agency and of any change of location thereof. Until otherwise designated from time to time by the Company in a notice to the Trustee, any such office or agency for all of the above purposes shall be the office or agency of the Principal Office of the Trustee in the Wilmington, Delaware. In case the Company shall fail to maintain any such office or agency in Wilmington, Delaware, or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the principal corporate trust office of the Trustee.

In addition to any such office or agency, the Company may from time to time designate one or more offices or agencies outside Wilmington, Delaware, where the Securities may be presented for registration of transfer and for exchange in the manner provided in this Indenture, and the Company may from time to time rescind such designation, as the Company may deem desirable or expedient; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain any such office or agency in Wilmington, Delaware, for the purposes above mentioned. The Company will give to the Trustee prompt written notice of any such designation or rescission thereof; provided, further, that the Company shall at all times maintain a paying agent in each such office or agency.

Section 3.3 Appointments to Fill Vacancies in Trustee's Office.

The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 6.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 3.4 Provision as to Paying Agent.

(a) If the Company shall appoint a paying agent other than the Trustee with respect to the Securities, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provision of this Section 3.4,

(i) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest on the Securities (whether such sums have been paid to it by the Company or by any other obligor on the Securities) in trust for the benefit of the holders of the Securities; and

(ii) that it will give the Trustee written notice of any failure by the Company (or by any other obligor on the Securities) to make any payment of the principal of and premium or interest on the Securities when the same shall be due and payable.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of and premium, if any, or interest on the Securities, set aside, segregate and hold in trust for the benefit of the holders of the Securities a sum sufficient to pay such principal, premium or interest so becoming due and will notify the Trustee in writing of any failure to take such action and of any failure by the Company (or by any other obligor under the Securities) to make any payment of the principal of and premium, if any, or interest on the Securities when the same shall become due and payable.

(c) Anything in this Section 3.4 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge with respect to the Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for any such Securities by the Trustee or any paying agent hereunder, as required by this Section 3.4, such sums to be held by the Trustee upon the trusts herein contained.

(d) Anything in this Section 3.4 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 3.4 is subject to Sections 11.3 and 11.4.

Section 3.5 **Certificate to Trustee.**

The Company will deliver to the Trustee on or before 120 days after the end of each fiscal year in each year, commencing with the first fiscal year ending after the date hereof, so long as Securities are outstanding hereunder, an Officers' Certificate as set forth in Exhibit B to this Indenture, one of the signers of which shall be the principal executive, principal financial or principal accounting officer of the Company, stating that in the course of the performance by the signers of their duties as officers of the Company they would normally have knowledge of any default by the Company in the performance of any covenants contained herein, stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof. For the purpose of this Section 3.5, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

Section 3.6 **Compliance with Consolidation Provisions.**

The Company will not, while any of the Securities remain outstanding, consolidate with, or merge into, or merge into itself, or sell or convey all or substantially all of its property to, any other Person unless the provisions of Article X hereof are complied with.

Section 3.7 **Limitation on Dividends.**

So long as any Securities remain outstanding and (i) there shall have occurred any event of which the Company has actual knowledge that (a) with the giving of notice or the lapse of time, or both, would constitute an Event of Default and (b) in respect of which the Company shall not have taken reasonable steps to cure, (ii) if such Securities are held by the Property Trustee, the Company shall be in default with respect to its payment of any obligations under the Preferred Securities Guaranty or (iii) the Company shall have given notice of its election of the exercise of its right to extend the interest payment period pursuant to Section 16.1 and any such extension shall be continuing, the Company will not (i) 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 (which includes common and preferred stock) or (ii) make any payment of principal, interest or premium, if any, on or repay or repurchase or redeem any debt securities of the Company (including any Other Debentures) that rank *pari passu* with or junior in right of payment to the Securities or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company (including Other Guarantees) if such guarantee ranks *pari passu* or junior in right of payment to the Securities (other than (a) dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, Common Stock of the Company, (b) any declaration of a dividend in connection with the implementation of a stockholder's 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, (c) payments under the Preferred Securities Guaranty, (d) as a result of a reclassification of the Company's capital stock or the exchange or the conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock, (e) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, and (f) purchases or issuances of Common Stock in connection with any of the Company's stock option, stock purchase, stock loan or other benefit plans for its directors, officers or employees or any of the Company's dividend reinvestment plans, in each case as now existing or hereafter established or amended). Notwithstanding anything herein to the contrary, in no event shall this provision be deemed to limit the Company from issuing shares of its common stock to any Person whether in a public or private transaction.

Section 3.8 **Covenants as to ServisFirst Capital Trust II**

In the event Securities are issued to ServisFirst Capital Trust II or a trustee of such Trust in connection with the issuance of Trust Securities by ServisFirst Capital Trust II, for so long as such Trust Securities remain outstanding, the Company will (i) directly or indirectly maintain 100% ownership of the Common Securities of ServisFirst Capital Trust II; provided, however, that any successor of the Company, permitted pursuant to Article X, may succeed to the Company's ownership of such Common Securities, (ii) use its reasonable efforts to cause ServisFirst Capital Trust II (a) to remain a statutory trust, except in connection with a distribution of Securities to the holders of the Trust Securities in a liquidation of ServisFirst Capital Trust II, the redemption of all of the Trust Securities of ServisFirst Capital Trust II or certain mergers, consolidations or amalgamations, each as permitted by the Trust Agreement of ServisFirst Capital Trust II, and (b) to continue to be treated as a grantor trust and not as an association taxable as a corporation or a partnership for United States federal income tax purposes and (iii) to use its reasonable efforts to cause each holder of Trust Securities to be treated as owning an undivided beneficial interest in the Securities.

Section 3.9 Payment of Expenses.

In connection with the offering, sale and issuance of the Securities to ServisFirst Capital Trust II and in connection with the sale of the Trust Securities by ServisFirst Capital Trust II, the Company, in its capacity as borrower with respect to the Securities, shall:

- (a) pay all costs and expenses relating to the offering, sale and issuance of the Securities, including compensation of the Trustee in accordance with the provisions of Section 6.6;
- (b) pay all costs and expenses of ServisFirst Capital Trust II (including, but not limited to, costs and expenses relating to the organization of ServisFirst Capital Trust II, the offering, sale and issuance of the Trust Securities, the fees and expenses of the Property Trustee and the Delaware Trustee, the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, sending notices, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing and disposition of the assets of ServisFirst Capital Trust II;
- (c) be primarily and fully liable for any indemnification obligations arising with respect to the Trust Agreement;
- (d) pay any and all taxes (other than United States withholding taxes attributable to ServisFirst Capital Trust II or its assets) and all liabilities, costs and expenses with respect to such taxes of ServisFirst Capital Trust II; and
- (e) pay all other fees, expenses, debts and obligations (other than the Trust Securities) related to ServisFirst Capital Trust II.

Section 3.10 Payment Upon Resignation or Removal.

Upon termination of this Indenture or the removal or resignation of the Trustee, unless otherwise stated, the Company shall pay to the Trustee all amounts accrued and owing to the date of such termination, removal or resignation. Upon termination of the Trust Agreement or the removal or resignation of the Delaware Trustee or the Property Trustee, as the case may be, pursuant to Section 5.7 of the Trust Agreement, the Company shall pay to the Delaware Trustee or the Property Trustee, as the case may be, all amounts accrued and owing to the date of such termination, removal or resignation.

Section 3.11 Approval of Senior Debt While Securities Outstanding.

As long as any Securities are outstanding, the Company may not incur any Senior Debt in excess of 0.5% of the Company's average assets for the Company's immediately preceding fiscal year without the approval of the holders of a majority of the Preferred Securities.

ARTICLE IV

**SECURITYHOLDERS' LISTS AND REPORTS BY THE
COMPANY AND THE TRUSTEE**

Section 4.1 Securityholders' Lists.

The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee:

(a) on a quarterly basis on each regular record date for the Securities, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Securityholders as of such record date; and

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

except that, no such lists need be furnished so long as the Trustee is in possession thereof by reason of its acting as Security registrar.

Section 4.2 Preservation and Disclosure of Lists.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of the Securities (1) contained in the most recent list furnished to it as provided in Section 4.1 or (2) received by it in the capacity of Securities registrar (if so acting) hereunder. The Trustee may destroy any list furnished to it as provided in Section 4.1 upon receipt of a new list so furnished.

(b) In case three or more holders of Securities (hereinafter referred to as "applicants") apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other holders of Securities or with holders of all Securities with respect to their rights under this Indenture and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall within 5 Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.2; or

(ii) inform such applicants as to the approximate number of holders of all Securities, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.2, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 4.2 a copy of the form of proxy or other communication which is specified in such request with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the holders of all Securities or would be in violation of applicable law. Such written statement shall specify the basis of such opinion.

(c) Each and every holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Securities in accordance with the provisions of subsection (b) of this Section 4.2, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under said subsection (b).

Section 4.3 **Reports of the Company.**

(a) General. The Company will furnish to the Trustee:

(i) unless the Company is then filing comparable reports pursuant to the reporting requirements of the Exchange Act, as soon as practicable and in any event within 45 days after the end of the first, second and third quarterly accounting periods of each fiscal year (commencing with the quarter ending March 31, 2010), the Company's unaudited consolidated balance sheet as of the last day of such quarterly period and the related consolidated statements of income and cash flows during such quarterly period prepared in accordance with GAAP and (in the case of second and third quarterly periods) for the portion of the fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year;

(ii) unless the Company is then filing comparable reports pursuant to the reporting requirements of the Exchange Act, as soon as practicable and in any event within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2009), the Company's consolidated balance sheet as of the end of such year and the related consolidated statements of income, cash flows, and shareholders' equity during such year setting forth in each case in comparative form corresponding figures from the preceding fiscal year accompanied by an audit report thereon of a firm of independent public accountants registered with the Public Company Accounting Oversight Board (the "PCAOB");

(iii) promptly after the Company obtains actual knowledge of the occurrence thereof, written notice of the occurrence of any event or condition which constitutes an Event of Default, and an Officers' Certificate of the Company specifically stating that such Event of Default has occurred and setting forth the details thereof and the action which the Company is taking or proposes to take with respect thereto.

(b) All such information provided to the Trustee as indicated above also will be provided by the Trustee upon written request to the Trustee (which may be a single continuing request), by (x) holders of Securities, (y) holders of beneficial interests (reasonably confirmed to the Trustee) in the Securities or (z) prospective purchasers of the Securities (and of beneficial interests in the Securities). The Company will furnish to the Trustee, upon its request, sufficient copies of all such information to accommodate the requests of such holders of Securities (and holders of beneficial interests therein) and prospective purchasers of Securities (and of beneficial interests in the Securities).

(c) Upon the request of any holder of Securities, any holder of a beneficial interest in the Securities, or the Trustee (on behalf of a holder of Securities or a holder of a beneficial interest in the Securities), the Company will furnish such information as is specified in paragraph (d)(4) of Rule 144A under the Securities Act, or any successor rule or regulation, to holders of Securities (and to holders of beneficial interests in the Securities), prospective purchasers of the Securities (and of beneficial interests in the Securities) who are "qualified institutional buyers" within the meaning of Rule 144A under the Securities Act or "accredited investors" within the meaning of Rule 506(a) of Regulation D under the Securities Act or to the Trustee for delivery to such holders of Securities (or holders of beneficial interests in Securities) or prospective purchasers of the Securities (or beneficial interests therein), as the case may be, unless, at the time of such request, the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Section 4.4 **Reports by the Trustee.**

(a) The Trustee shall transmit to Securityholders such reports concerning the Trustee and its actions under this Indenture pursuant to the requirements of the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each anniversary following the date of this Indenture, commencing March 15, 2011, deliver to Securityholders a brief report, dated as of such date, which complies with the provisions of such Section 313(a) of the Trust Indenture Act.

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

**ARTICLE V
REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS
ON EVENT OF DEFAULT**

Section 5.1 Events of Default.

One or more of the following events of default shall constitute an Event of Default hereunder (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest upon any Security or any Other Debentures when it becomes due and payable, and continuance of such default for a period of 30 days; provided, however, that a valid extension of an interest payment period by the Company in accordance with the terms hereof or, in the case of any Other Debentures, the indenture related thereto, shall not constitute a default in the payment of interest for this purpose; or

(b) default in the payment of all or any part of the principal of (or premium, if any, on) any Security or any Other Debentures as and when the same shall become due and payable either at maturity, upon prepayment, by declaration of acceleration of maturity or otherwise; or

(c) default in any material respect in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the holders of at least 25% in aggregate principal amount of the outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(d) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days; or

(e) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or of any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due.

If an Event of Default (other than an Event of Default specified in Section 5.1(d) or 5.1(e)) with respect to Securities at the time outstanding occurs and is continuing, then in every such case the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities then outstanding may declare the principal amount of all Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the holders of the outstanding Securities), and upon any such declaration the same shall become immediately due and payable. If an Event of Default specified in Section 5.1(d) or 5.1(e) with respect to Securities at the time outstanding occurs, the principal amount of all the Securities shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal of the Securities shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, (i) the Company shall pay or shall deposit with the Trustee a sum sufficient to pay (A) all matured installments of interest (including Compounded Interest, and Additional Sums, if any) upon all the Securities and the principal of and premium, if any, on any and all Securities which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest specified in the Securities to the date of such payment or deposit) and (B) such amount as shall be sufficient to pay to the Trustee and each predecessor Trustee all amounts payable pursuant to Section 6.6, and (ii) any and all Events of Default under the Indenture shall have been cured, waived or otherwise remedied as provided herein, then, in every such case, the holders of a majority in aggregate principal amount of the Securities then outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the holders of the Securities shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the holders of the Securities shall continue as though no such proceeding had been taken.

Section 5.2 **Payment of Securities on Default; Suit Therefor.**

The Company covenants that (a) in case default shall be made in the payment of any installment of interest upon any of the Securities as and when the same shall become due and payable, and such default shall have continued for a period of 30 days, or (b) in case default shall be made in the payment of the principal of or premium, if any, on any of the Securities as and when the same shall have become due and payable, whether at maturity of the Securities or upon prepayment or by declaration of acceleration of maturity or otherwise, then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Securities, the whole amount that then shall have become due and payable on all such Securities for principal and premium, if any, or interest, or both, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law and, if the Securities are held by ServisFirst Capital Trust II or a trustee of such trust, without duplication of any other amounts paid by ServisFirst Capital Trust II or a trustee in respect thereof) upon the overdue installments of interest at the rate borne by the Securities; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its gross negligence or bad faith.

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

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Securities under Title 11, United States Code, or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in the case of any other similar judicial proceedings relative to the Company or other obligor upon the Securities, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 5.2, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Securities and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for all amounts payable pursuant to Section 6.6 to the Trustee and each predecessor Trustee) and of the Securityholders allowed in such judicial proceedings relative to the Company or any other obligor on the Securities, or to the creditors or property of the Company or such other obligor, unless prohibited by applicable law and regulations, to vote on behalf of the holders of the Securities in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or Person performing similar functions in comparable proceedings, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Securityholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee such amounts as shall be sufficient to pay to the Trustee and each predecessor Trustee all amounts payable pursuant to Section 6.6.

To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.6 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Securityholders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be construed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities, or the production thereof in any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Securities.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Securities, and it shall not be necessary to make any holders of the Securities parties to any such proceedings.

Section 5.3 Application of Moneys Collected by Trustee.

Any moneys collected by the Trustee shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Trustee under Section 6.6, including the costs and expenses of collection applicable to the Securities and reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or bad faith;

Second: To the payment of all Senior Debt of the Company if and to the extent required by Article XV;

Third: To the payment of the amounts then due and unpaid upon Securities for principal of (and premium, if any) and interest on the Securities, in respect of which or for the benefit of which money has been collected, ratably, without preference of priority of any kind, according to the amounts due on such Securities for principal (and premium, if any) and interest, respectively; and

Fourth: To the Company.

Section 5.4 Proceedings by Securityholders.

Except as contemplated by this Section 5.4, no holder of any Security shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to the Securities specifying such Event of Default, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Securities then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action, suit or proceeding, it being understood and intended, and being expressly covenanted by the taker and holder of every Security with every other taker and holder and the Trustee, that no one or more holders of Securities shall have any right in any manner whatsoever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities.

Notwithstanding any other provisions in this Indenture, however, the right of any holder of any Security to receive payment of the principal of (premium, if any) and interest on such Security, on or after the same shall have become due and payable, or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the consent of such holder and by accepting a Security hereunder it is expressly understood, intended and covenanted by the taker and holder of every Security with every other such taker and holder and the Trustee, that no one or more holders of Securities shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other Securities, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities. For the protection and enforcement of the provisions of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

The Company and the Trustee acknowledge that pursuant to the Trust Agreement, the holders of Preferred Securities are entitled, in the circumstances and subject to the limitations set forth therein, to commence a Direct Action with respect to any Event of Default under this Indenture and the Securities.

Section 5.5 Proceedings by Trustee.

In case an Event of Default occurs with respect to Securities and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 5.6 Remedies Cumulative and Continuing.

All powers and remedies given by this Article V to the Trustee or to the Securityholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any other powers and remedies available to the Trustee or the holders of the Securities, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to the Securities, and no delay or omission of the Trustee or of any holder of any of the Securities to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 5.4, every power and remedy given by this Article V or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

Section 5.7 Direction of Proceedings and Waiver of Defaults by Majority of Securityholders.

The holders of a majority in aggregate principal amount of the Securities at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that (subject to the provisions of Section 6.1) the Trustee shall have the right to decline to follow any such direction if the Trustee shall determine that the action so directed would be unjustly prejudicial to the holders not taking part in such direction or if the Trustee being advised by counsel determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees and/or Responsible Officers shall determine that the action or proceedings so directed would involve the Trustee in personal liability. Prior to any declaration accelerating the maturity of the Securities, the holders of a majority in aggregate principal amount of the Securities at the time outstanding may on behalf of the holders of all of the Securities waive any past default or Event of Default and its consequences except a default (a) in the payment of principal of or premium, if any, or interest on any of the Securities or (b) in respect of covenants or provisions hereof which cannot be modified or amended without the consent of the holder of each Security affected; provided, however, that if the Securities are held by the Property Trustee, such waiver or modification to such waiver shall not be effective until the holders of a majority in aggregate liquidation amount of Trust Securities shall have consented to such waiver or modification to such waiver; provided further, that if the consent of the holder of each outstanding Security is required, such waiver shall not be effective until each holder of the Trust Securities shall have consented to such waiver. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Securities shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 5.7, said default or Event of Default shall for all purposes of the Securities and this Indenture be deemed to have been cured and to be not continuing.

Section 5.8 Notice of Defaults.

The Trustee shall, within 90 days after the occurrence of a default with respect to the Securities actually known to a Responsible Officer of the Trustee, mail to all Securityholders, as the names and addresses of such holders appear upon the Security register, notice of all defaults known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purpose of this Section 5.8 being hereby defined to be the events specified in clauses (a), (b), (c), (d) and (e) of Section 5.1, not including periods of grace, if any, provided for therein, and irrespective of the giving of written notice specified in clause (c) of Section 5.1); and provided that, except in the case of default in the payment of the principal of or premium, if any, or interest on any of the Securities, the Trustee shall be fully protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Securityholders; and provided further, that in the case of any default of the character specified in Section 5.1(c) no such notice to Securityholders shall be given until at least 60 days after the occurrence thereof but shall be given within 90 days after such occurrence.

Section 5.9 Undertaking to Pay Costs.

All parties to this Indenture agree, and each holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.9 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in aggregate principal amount of the Securities outstanding, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security against the Company on or after the same shall have become due and payable.

ARTICLE VI
CONCERNING THE TRUSTEE

Section 6.1 Duties and Responsibilities of Trustee.

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

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

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred

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

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

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith, in accordance with the direction of the Securityholders pursuant to Section 5.7, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture and that indemnity satisfactory to it against such risk is not reasonably assured to it.

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

Section 6.2 **Reliance on Documents, Opinions, etc.**

Except as otherwise provided in Section 6.1:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein may be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

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

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, coupon or other paper or document, unless requested in writing to do so by the holders of a majority in aggregate principal amount of the outstanding Securities; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity satisfactory to it against such expense or liability as a condition to so proceeding;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents (including any Authenticating Agent) attorneys, custodians or nominees, and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed by it with due care;

(h) the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Company, except as otherwise set forth herein, but the Trustee may require of the Company full information and advice as to the performance of the covenants, conditions and agreements contained herein and shall be entitled in connection herewith to examine the books, records and premises of the Company;

(i) in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any such investment prior to its stated maturity or the failure of the party directing such investment to provide timely written investment direction. The Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction; and

(j) in the event that the Trustee is also acting as paying agent, security registrar, exchange agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded to such paying agent, security registrar, exchange agent or transfer agent.

Section 6.3 No Responsibility for Recitals, etc.

The recitals contained herein and in the Securities (except in the certificate of authentication of the Trustee or the Authenticating Agent) shall be taken as the statements of the Company and the Trustee and the Authenticating Agent assume no responsibility for the correctness of the same. The Trustee and the Authenticating Agent make no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee and the Authenticating Agent shall not be accountable for the use or application by the Company of any Securities or the proceeds of any Securities authenticated and delivered by the Trustee or the Authenticating Agent in conformity with the provisions of this Indenture.

Section 6.4 Trustee, Authenticating Agent, Paying Agents, Transfer Agents or Registrar May Own Securities.

The Trustee or any Authenticating Agent or any paying agent or any transfer agent or any Security registrar, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, Authenticating Agent, paying agent, transfer agent or Security registrar.

Section 6.5 Moneys to be Held in Trust.

Subject to the provisions of Section 11.4, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purpose for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee and any paying agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 6.6 Compensation and Expenses of Trustee.

The Company, as borrower, covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as shall be agreed to in writing between the Company and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its gross negligence or bad faith. The Company also covenants to indemnify each of the Trustee (and its officers, agents, directors and employees) or any predecessor Trustee (and its officers, agents, directors and employees) for, and to hold each of them harmless against, any and all loss, damage, claim, liability or expense including taxes (other than taxes based on the income of the Trustee) incurred without gross negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section 6.6 shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.1(d) or Section 5.1(e), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the resignation or removal of the Trustee and the defeasance or other termination of this Indenture.

Since ServisFirst Capital Trust II is being formed solely to facilitate an investment in the Trust Securities, the Company, as Holder of the Common Securities, hereby covenants to pay all debts and obligations (other than with respect to the Preferred Securities and the Common Securities) and all reasonable costs and expenses of ServisFirst Capital Trust II (including without limitation all reasonable costs and expenses relating to the organization of ServisFirst Capital Trust II, the fees and expenses of the Trustees and all costs and expenses relating to the operation of ServisFirst Capital Trust II) and to pay any and all taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed on ServisFirst Capital Trust II and the Property Trustee after paying such expenses will be equal to the amounts ServisFirst Capital Trust II and the Property Trustee would have received had no such costs or expenses been incurred by or imposed on ServisFirst Capital Trust II. The foregoing obligations of the Company are for the benefit of, and shall be enforceable by, any person to whom any such debts, obligations, costs, expenses and taxes are owed (each, a "Creditor") whether or not such Creditor has received notice thereof. Any such Creditor may enforce such obligations directly against the Company, and the Company irrevocably waives any right or remedy to require that any such Creditor take any action against ServisFirst Capital Trust II or any other person before proceeding against the Company. The Company shall execute such additional agreements as may be necessary or desirable to give full effect to the foregoing.

Section 6.7 Officers' Certificate as Evidence.

Except as otherwise provided in Sections 6.1 and 6.2, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof is herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of gross negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 6.8 Conflicting Interest of Trustee.

If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 6.9 Eligibility of Trustee.

The Trustee hereunder shall at all times be a corporation or a national banking association organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia or a corporation or other Person permitted to act as trustee by the Commission authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000) and subject to supervision or examination by federal, state, territorial, or District of Columbia authority. If such corporation or a national banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.9 the combined capital and surplus of such corporation or national banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee.

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.9, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.10.

Section 6.10 Resignation or Removal of Trustee.

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof to the holders of the Securities at their addresses as they shall appear on the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the mailing of such notice of resignation to the affected Securityholders, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide holder of a Security for at least six months may, subject to the provisions of Section 5.9, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(1) the Trustee shall fail to comply with the provisions of Section 6.8 after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.8 and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

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

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 5.9, any Securityholder who has been a bona fide holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Securities at the time outstanding may at any time remove the Trustee and nominate a successor trustee, which shall be deemed appointed as successor trustee unless within 10 days after such nomination the Company objects thereto or if no successor trustee shall have been so appointed and shall have accepted appointment within 30 days after such removal, in which case the Trustee so removed or any Securityholder, upon the terms and conditions and otherwise as in subsection (a) of this Section 6.10 provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

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

Section 6.11 Acceptance by Successor Trustee.

Any successor trustee appointed as provided in Section 6.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the retiring trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any and all amounts then due and owing to it hereunder, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring trustee thereunder. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 6.6.

No successor trustee shall accept appointment as provided in this Section 6.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 6.8 and eligible under the provisions of Section 6.9.

Upon acceptance of appointment by a successor trustee as provided in this Section 6.10, the Company shall mail notice of the succession of such trustee hereunder to the holders of Securities at their addresses as they shall appear on the Security register. If the Company fails to mail such notice within 10 days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 6.12 Successor by Merger, etc.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

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

Section 6.13 Limitation on Rights of Trustee as a Creditor.

The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to the provisions in Section 311(a) of the Trust Indenture Act to the extent included therein.

Section 6.14 Authenticating Agents.

There may be one or more Authenticating Agents appointed by the Trustee upon the request of the Company with power to act on its behalf and subject to its direction in the authentication and delivery of Securities issued upon exchange or registration of transfer thereof as fully to all intents and purposes as though any such Authenticating Agent had been expressly authorized to authenticate and deliver Securities; provided, that the Trustee shall have no liability to the Company for any acts or omissions of the Authenticating Agent with respect to the authentication and delivery of Securities. Any such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States or of any state or territory thereof or of the District of Columbia authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of at least U.S. \$50,000,000 and being subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this Section 6.14 the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect herein specified in this Section.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section 6.14 without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section 6.14, the Trustee may, and upon the request of the Company shall, promptly appoint a successor Authenticating Agent eligible under this Section 6.14, shall give written notice of such appointment to the Company and shall mail notice of such appointment to all Securityholders as the names and addresses of such holders appear on the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent herein.

The Company, as borrower, agrees to pay to any Authenticating Agent from time to time reasonable compensation for its services. Any Authenticating Agent shall have no responsibility or liability for any action taken by it as such in accordance with the directions of the Trustee.

ARTICLE VII

CONCERNING THE SECURITYHOLDERS

Section 7.1 Action by Securityholders.

Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of such holders of Securities voting in favor thereof at any meeting of such Securityholders duly called and held in accordance with the provisions of Article VIII, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Securityholders.

If the Company shall solicit from the Securityholders any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officers' Certificate, fix in advance a record date for the determination of Securityholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Securityholders of record at the close of business on the record date shall be deemed to be Securityholders for the purposes of determining whether Securityholders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Securities shall be computed as of the record date; provided, however, that no such authorization, agreement or consent by such Securityholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

Section 7.2 Proof of Execution by Securityholders.

Subject to the provisions of Sections 6.1, 6.2 and 8.5, proof of the execution of any instrument by a Securityholder or his agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The ownership of Securities shall be proved by the Security Register or by a certificate of the Security registrar. The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

The record of any Securityholders' meeting shall be proved in the manner provided in Section 8.6.

Section 7.3 Who Are Deemed Absolute Owners.

Prior to due presentment for registration of transfer of any Security, the Company, the Trustee, any Authenticating Agent, any paying agent, any transfer agent and any Security registrar may deem the Person in whose name such Security shall be registered upon the Security Register to be, and may treat him as, the absolute owner of such Security (whether or not such Security shall be overdue) for the purpose of receiving payment of or on account of the principal of and premium, if any, and interest on such Security and for all other purposes; and neither the Company nor the Trustee nor any Authenticating Agent nor any paying agent nor any transfer agent nor any Security registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being or upon his order shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Section 7.4 Securities Owned by Company Deemed Not Outstanding.

In determining whether the holders of the requisite aggregate principal amount of Securities have concurred in any direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, except for the Securities owned by or on behalf of ServisFirst Capital Trust II, or any other obligor on the Securities shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 7.4 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not the Company or any such other obligor or Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 7.5 Revocation of Consents; Future Holders Bound.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.1, of the taking of any action by the holders of the percentage in aggregate principal amount of the Security specified in this Indenture in connection with such action, any holder of a Security (or any Security issued in whole or in part in exchange or substitution therefor) the serial number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 7.2, revoke such action so far as concerns such Security (or so far as concerns the principal amount represented by any exchanged or substituted Security). Except as aforesaid, any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Security or any Security issued in exchange or substitution therefor.

ARTICLE VIII

SECURITYHOLDERS' MEETINGS

Section 8.1 Purpose of Meetings.

A meeting of Securityholders may be called at any time and from time to time pursuant to the provisions of this Article VIII for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any Default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to any of the provisions of Article V;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article VI;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 9.2; or

(d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of such Securities under any other provision of this Indenture or under applicable law.

Section 8.2 Call of Meetings by Trustee.

The Trustee may at any time call a meeting of Securityholders to take any action specified in Section 8.1, to be held at such time and such place as the Trustee shall determine. Notice of every meeting of the Securityholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed to holders of Securities at their addresses as they shall appear on the Securities Register. Such notice shall be mailed not less than 20 nor more than 180 days prior to the date fixed for the meeting.

Section 8.3 Call of Meetings by Company or Securityholders.

In case at any time the Company pursuant to a resolution of the Board of Directors, or the holders of at least 10% in aggregate principal amount of the Securities then outstanding, shall have requested the Trustee to call a meeting of Securityholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Securityholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 8.1, by mailing notice thereof as provided in Section 8.2.

Section 8.4 Qualifications for Voting.

To be entitled to vote at any meeting of Securityholders a Person shall be (a) a holder of one or more Securities or (b) a Person appointed by an instrument in writing as proxy by a holder of one or more Securities. The only Persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 8.5 Regulations.

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

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 8.3, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 8.4, at any meeting each holder of Securities or proxy therefor shall be entitled to one vote for each \$1 principal amount of Securities held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities held by him or instruments in writing as aforesaid duly designating him as the person to vote on behalf of other Securityholders. Any meeting of Securityholders duly called pursuant to the provisions of Section 8.2 or 8.3 may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 8.6 Voting.

The vote upon any resolution submitted to any meeting of holders of Securities shall be by written ballots on which shall be subscribed the signatures of such holders or of their representatives by proxy and the serial number or numbers of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 8.2. The record shall show the serial numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

ARTICLE IX

AMENDMENTS

Section 9.1 Without Consent of Securityholders.

The Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time amend this Indenture, without the consent of the Securityholders, for one or more of the following purposes:

- (a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company pursuant to Article X hereof;
- (b) to add to the covenants of the Company such further covenants, restrictions or conditions for the protection of the Securityholders as the Board of Directors and the Trustee shall consider to be for the protection of the Securityholders, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions or conditions a Default or an Event of Default permitting the enforcement of all or any of the remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, restriction or condition such amendment may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other Defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;
- (c) to provide for the issuance under this Indenture of Securities in coupon form (including Securities registrable as to principal only) and to provide for exchangeability of such Securities with the Securities issued hereunder in fully registered form and to make all appropriate changes for such purpose;
- (d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture; provided that any such action shall not materially adversely affect the interests of the holders of the Securities;
- (e) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Securities;
- (f) to make provision for transfer procedures, certification, book-entry provisions, the form of restricted securities legends, if any, to be placed on Securities, and all other matters required pursuant to Section 2.7 or otherwise necessary, desirable or appropriate in connection with the issuance of Securities to holders of Preferred Securities in the event of a distribution of Securities by ServisFirst Capital Trust II following a Dissolution Event;

- (g) to qualify or maintain qualification of this Indenture under the Trust Indenture Act; or
- (h) to make any change that does not adversely affect the rights of any Securityholder in any material respect.

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

Any amendment to this Indenture authorized by the provisions of this Section 9.1 may be executed by the Company and the Trustee without the consent of the holders of any of the Securities at the time outstanding, notwithstanding any of the provisions of Section 9.2.

Section 9.2 With Consent of Securityholders.

With the consent (evidenced as provided in Section 7.1) of the holders of a majority in aggregate principal amount of the Securities at the time outstanding, the Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time amend this Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the holders of the Securities; provided, however, that no such amendment shall without the consent of the holders of each Security then outstanding and affected hereby (i) extend the Stated Maturity of any Security, or reduce the rate or extend the time of payment of interest thereon (except as contemplated by Article XVI), or reduce the principal amount thereof (including in the case of a discounted Security the amount payable thereon in the event of acceleration or the amount provable in bankruptcy), or reduce any amount payable on redemption thereof, or make the principal thereof or any interest or premium thereon payable in any coin or currency other than that provided in the Securities, or impair or affect the right of any Securityholder to institute suit for payment thereof, or (ii) reduce the aforesaid percentage of Securities the holders of which are required to consent to any such amendment to this Indenture, provided, however, that if the Securities are held by ServisFirst Capital Trust II, such amendment shall not be effective until the holders of a majority in liquidation amount of Trust Securities shall have consented to such amendment; provided, further, that if the consent of the holder of each outstanding Security is required, such amendment shall not be effective until each holder of the Trust Securities shall have consented to such amendment.

Upon the request of the Company accompanied by a copy of a resolution of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any supplemental indenture affecting such amendment, and upon the filing with the Trustee of evidence of the consent of Securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Trustee shall transmit by mail, first class postage prepaid, a notice, prepared by the Company, setting forth in general terms the substance of such supplemental indenture, to the Securityholders as their names and addresses appear upon the Security Register. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 9.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 9.3 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture pursuant to the provisions of this Article IX, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.4 Notation on Securities.

Securities authenticated and delivered after the execution of any supplemental indenture affecting such series pursuant to the provisions of this Article IX may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee or the Authenticating Agent and delivered in exchange for the Securities then outstanding.

Section 9.5 Evidence of Compliance of Supplemental Indenture to be Furnished Trustee.

The Trustee, subject to the provisions of Sections 6.1 and 6.2, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article is authorized or permitted by, and conforms to, the terms of this Article and that it is proper for the Trustee under the provisions of this Article to join in the execution thereof.

ARTICLE X

CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 10.1 Company May Consolidate, etc., on Certain Terms.

Nothing contained in this Indenture or in any of the Securities shall prevent any consolidation or merger of the Company with or into any other Person (whether or not affiliated with the Company, as the case may be), or successive consolidations or mergers in which the Company, as the case may be, or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or lease of the property of the Company, as the case may be, or its successor or successors as an entirety, or substantially as an entirety, to any other Person (whether or not affiliated with the Company, as the case may be, or its successor or successors) authorized to acquire and operate the same; provided, that (a) the Company is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, conveyance, transfer or lease of property is made is a Person organized and existing under the laws of the United States or any State thereof or the District of Columbia, and (b) upon any such consolidation, merger, sale, conveyance, transfer or lease, the due and punctual payment of the principal of (and premium, if any) and interest on the Securities according to their tenor and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be kept or performed by the Company shall be expressly assumed, by supplemental indenture (which shall conform to the provisions of the Trust Indenture Act, as then in effect) satisfactory in form to the Trustee, and executed and delivered to the Trustee by the Person formed by such consolidation, or into which the Company, as the case may be, shall have been merged, or by the Person which shall have acquired such property, and (c) after giving effect to such consolidation, merger, sale, conveyance, transfer or lease, no Default or Event of Default shall have occurred and be continuing.

Section 10.2 Successor Corporation to be Substituted for Company.

In case of any such consolidation, merger, conveyance or transfer and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Securities and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the Company thereupon shall be relieved of any further liability or obligation hereunder or upon the Securities. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of ServisFirst Bancshares, Inc., any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee or the Authenticating Agent; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee or the Authenticating Agent shall authenticate and deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee or the Authenticating Agent for authentication, and any Securities which such successor Person thereafter shall cause to be signed and delivered to the Trustee or the Authenticating Agent for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

Section 10.3 Opinion of Counsel to be Given Trustee.

The Trustee, subject to the provisions of Sections 6.1 and 6.2, may receive an Opinion of Counsel as conclusive evidence that any consolidation, merger, sale, conveyance, transfer or lease, and any assumption, permitted or required by the terms of this Article X complies with the provisions of this Article X.

ARTICLE XI

SATISFACTION AND DISCHARGE OF INDENTURE

Section 11.1 Discharge of Indenture.

When (a) the Company shall deliver to the Trustee for cancellation all Securities theretofore authenticated (other than any Securities which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.8) and not theretofore cancelled, or (b) all the Securities not theretofore cancelled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for prepayment within one year under arrangements satisfactory to the Trustee for the giving of notice of prepayment, and the Company shall deposit or cause to be deposited with the Trustee, in trust, funds sufficient to pay on the Stated Maturity or upon prepayment all of the Securities (other than any Securities which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.8) not theretofore cancelled or delivered to the Trustee for cancellation, including principal (and premium, if any) and interest due or to become due to the Stated Maturity or prepayment date, as the case may be, but excluding, however, the amount of any moneys for the payment of principal (or premium, if any) or interest on the Securities (1) theretofore repaid to the Company in accordance with the provisions of Section 11.4, or (2) paid to any State or to the District of Columbia pursuant to its unclaimed property or similar laws, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect except for the provisions of Sections 2.2, 2.7, 2.8, 3.1, 3.2, 3.4, 6.6, 6.10, 11.2 and 11.4 hereof shall survive until such Securities shall mature and be paid. Thereafter, Sections 6.6, 6.10 and 11.4 shall survive, and the Trustee, on demand of the Company accompanied by any Officers' Certificate and an Opinion of Counsel to the effect that all conditions to the satisfaction and discharge of this Indenture have been satisfied and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture, the Company, however, hereby agreeing to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Indenture or the Securities.

Section 11.2 Deposited Moneys and U.S. Government Obligations to be Held in Trust by Trustee.

Subject to the provisions of Section 11.4, all moneys and U.S. Government Obligations deposited with the Trustee pursuant to Sections 11.1 or 11.5 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company if acting as its own paying agent), to the holders of the particular Securities for the payment of which such moneys or U.S. Government Obligations have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest.

The Company shall pay and indemnify the Trustee and its officers, directors, agents and employees against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 11.5 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the holders of outstanding Securities.

Section 11.3 Paying Agent to Repay Moneys Held.

Upon the satisfaction and discharge of this Indenture all moneys then held by any paying agent of the Securities (other than the Trustee) shall, upon written demand of the Company, be repaid to it or paid to the Trustee, and thereupon such paying agent shall be released from all further liability with respect to such moneys.

Section 11.4 Return of Unclaimed Moneys.

Any moneys deposited with or paid to the Trustee or any paying agent for payment of the principal of or premium, if any, or interest on Securities and not applied but remaining unclaimed by the holders of Securities for two years after the date upon which the principal of or premium, if any, or interest on such Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on written demand; and the holder of any of the Securities shall thereafter look only to the Company for any payment which such holder may be entitled to collect and all liability of the Trustee or such paying agent with respect to such moneys shall thereupon cease.

Section 11.5 Defeasance Upon Deposit of Moneys or U.S. Government Obligations.

The Company shall be deemed to have been Discharged (as defined below) from its respective obligations with respect to the Securities on the 91st day after the applicable conditions set forth below have been satisfied with respect to the Securities at any time after the applicable conditions set forth below have been satisfied:

(a) The Company shall have deposited or caused to be deposited irrevocably with the Trustee or the Defeasance Agent (as defined below) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the holders of the Securities (i) money in an amount, or (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient, in the opinion (with respect to (ii) and (iii)) of independent public accountants registered with the PCAOB expressed in a written certification thereof delivered to the Trustee and the Defeasance Agent, if any, to pay and discharge each installment of principal of and interest and premium, if any, on the outstanding Securities on the dates such installments of principal, premium or interest are due;

(b) if the Securities are then listed on any national securities exchange, the Company shall have delivered to the Trustee and the Defeasance Agent, if any, an Opinion of Counsel to the effect that the exercise of the option under this Section 11.5 would not cause such Securities to be delisted from such exchange;

(c) no Default or Event of Default with respect to the Securities shall have occurred and be continuing on the date of such deposit;

(d) the Company shall have delivered to the Trustee and the Defeasance Agent, if any, an Opinion of Counsel to the effect that holders of the Securities will not recognize income, gain or loss for United States federal income tax purposes as a result of the exercise of the option under this Section 11.5 and will be subject to United States federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised, and such opinion shall be accompanied by a private letter ruling to that effect received from the United States Internal Revenue Service or a revenue ruling pertaining to a comparable form of transaction to that effect published by the United States Internal Revenue Service; and

(e) the Company shall have delivered to the Trustee and the Defeasance Agent, if any, 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 complied with.

"Discharged" means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by, and obligations under, the Securities and to have satisfied all the obligations under this Indenture relating to the Securities (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except (A) the rights of holders of Securities to receive, from the trust fund described in clause (1) above, payment of the principal of and the interest and premium, if any, on the Securities when such payments are due; (B) the Company's obligations with respect to the Securities under Sections 2.7, 2.8, 5.2 and 11.4; and (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder.

"Defeasance Agent" means another financial institution which is eligible to act as Trustee hereunder and which assumes all of the obligations of the Trustee necessary to enable the Trustee to act hereunder. In the event such a Defeasance Agent is appointed pursuant to this Section, the following conditions shall apply:

(a) The Trustee shall have approval rights over the document appointing such Defeasance Agent and the document setting forth such Defeasance Agent's rights and responsibilities; and

(b) The Defeasance Agent shall provide verification to the Trustee acknowledging receipt of sufficient money and/or U.S. Government Obligations to meet the applicable conditions set forth in this Section 11.5.

Section 11.6 Reinstatement.

If the Trustee or any Defeasance Agent is unable to apply any money in accordance with Section 11.5 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.5 until such time as the Trustee or any Defeasance Agent is permitted to apply all such money in accordance with Section 11.5.

ARTICLE XII

**IMMUNITY OF INCORPORATORS, STOCKHOLDERS,
OFFICERS AND DIRECTORS**

Section 12.1 Indenture and Securities Solely Corporate Obligations.

No recourse for the payment of the principal of or premium, if any, or interest on any Security, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture, or in any Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor Person to the Company, either directly or through the Company any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.1 Successors.

All the covenants, stipulations, promises and agreements in this Indenture contained by the Company shall bind its successors and assigns whether so expressed or not.

Section 13.2 Official Acts by Successor Corporation.

Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

Section 13.3 Surrender of Company Powers.

The Company by instrument in writing executed by authority of 2/3 (two-thirds) of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company, and thereupon such power so surrendered shall terminate both as to the Company, as the case may be, and as to any successor Person.

Section 13.4 Address for Notices, etc.

Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities on the Company may be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee for the purpose) to the Company, 3300 Cahaba Road, Suite 300, Birmingham, Alabama 35223 Attention: Thomas A. Broughton III. Any notice, direction, request or demand by any Securityholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Principal Office of the Trustee, (unless another address is provided by the Trustee to the Company for the purpose). All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, and mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

Section 13.5 Governing Law.

This Indenture and each Security shall be deemed to be a contract made under the laws of the State of Delaware, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to conflicts of laws principles thereof.

Section 13.6 Evidence of Compliance with Conditions Precedent.

(a) Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that in the opinion of the signers all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 13.7 Business Days.

In any case where the date of payment of principal of or premium, if any, or interest on the Securities will not be a Business Day, the payment of such principal of or premium, if any, or interest on the Securities need not be made on such date but shall be made on the next succeeding Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date of payment and no interest shall accrue for the period from and after such date.

Section 13.8 Table of Contents, Headings, etc.

The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 13.9 Execution in Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 13.10 Separability.

In case any one or more of the provisions contained in this Indenture or in the Securities shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of the Securities, but this Indenture and the Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 13.11 Assignment.

The Company will have the right at all times to assign any of its respective rights or obligations under this Indenture to a direct or indirect wholly owned Subsidiary of the Company, provided that, in the event of any such assignment, the Company, as the case may be, will remain liable for all such obligations. Subject to the foregoing, the Indenture is binding upon and inures to the benefit of the parties thereto and their respective successors and assigns. This Indenture may not otherwise be assigned by the parties hereto.

Section 13.12 **Acknowledgment of Rights.**

The Company acknowledges that, with respect to any Securities held by ServisFirst Capital Trust II or a trustee of such trust, if the Property Trustee of such Trust fails to enforce its rights under this Indenture as the holder of the Securities held as the assets of ServisFirst Capital Trust II any holder of Preferred Securities may institute legal proceedings directly against the Company to enforce such Property Trustee's rights under this Indenture without first instituting any legal proceedings against such Property Trustee or any other Person. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay principal of or premium, if any, or interest on the Securities when due, the Company acknowledges that a holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such holder of the principal of or premium, if any, or interest on the Securities having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such holder on or after the respective due date specified in the Securities.

ARTICLE XIV

PREPAYMENT OF SECURITIES

Section 14.1 **Prepayment.**

If a Special Event has occurred and is continuing, then the Company shall have the right upon (i) not less than 45 days written notice to the Trustee and (ii) not less than 30 days nor more than 60 days written notice to the Securityholders, to prepay the Securities, in whole (but not in part), at any time within 90 days following the occurrence of such Special Event, at the Prepayment Price. The Prepayment Price shall be paid prior to 12:00 noon, New York City time, on the date of such prepayment or such earlier time as the Company determines, provided that the Company shall deposit with the Trustee an amount sufficient to pay the Prepayment Price by 10:00 a.m., New York City time, on the date such Prepayment Price is to be paid.

Section 14.2 **[Reserved.]**

Section 14.3 **No Sinking Fund.**

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

Section 14.4 **Notice of Prepayment.**

In case the Company shall desire to exercise the right to prepay all of the Securities in accordance with their terms, which shall be done pursuant to a Board Resolution, it shall fix a date for prepayment and shall mail a notice of such prepayment at least 30 and not more than 60 days prior to the date fixed for prepayment to the holders of Securities so to be prepaid as a whole or in part at their last addresses as the same appear on the Security Register. Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Security designated for prepayment as a whole or in part shall not affect the validity of the proceedings for the prepayment of any other Security.

Each such notice of prepayment shall specify the CUSIP number of the Securities to be prepaid, the date fixed for prepayment, the prepayment price at which the Securities are to be prepaid (or the method by which such prepayment price is to be calculated), the place or places of payment that payment will be made upon presentation and surrender of the Securities, that interest accrued to the date fixed for prepayment will be paid as specified in said notice, and that on and after said date interest thereon or on the portions thereof to be prepaid will cease to accrue. If less than all the Securities are to be prepaid the notice of prepayment shall specify the numbers of the Securities to be prepaid.

In the event the Securities are issued in book-entry form with the Depository: (i) the Trustee may deal with the Depository as the authorized representative of the Securityholders; (ii) the rights of the Securityholders shall be exercised only through the Depository and shall be limited to those established by law and agreement between the Securityholders and the Depository and/or direct participants of the Depository; (iii) the Depository will make book-entry transfers among the direct participants of the Depository and will receive and transmit distributions of principal and interest on the Securities to such direct participants; and (iv) the direct participants of the Depository shall have no rights under this Indenture under or with respect to any of the Securities held on their behalf by the Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Securities for all purposes whatsoever.

Prior to 10:00 a.m., New York City time, on the prepayment date specified in the notice of prepayment given as provided in this Section, the Company will deposit with the Trustee or with one or more paying agents an amount of money sufficient to prepay on the prepayment date all the Securities so called for prepayment at the appropriate Prepayment Price, together with accrued interest to the date fixed for prepayment.

The Company will give the Trustee written notice not less than 45 days prior to the prepayment date as to the aggregate principal amount of Securities to be prepaid.

If less than all the Securities of any series are to be prepaid, the particular Securities to be prepaid shall be selected, not more than 60 days prior to the date of prepayment, by the Trustee from the Outstanding Securities not previously called for prepayment, on a pro rata basis or by such other method as the Trustee shall deem fair and appropriate and which may provide for the selection for prepayment of a portion of the principal amount of any Security, provided that the remaining portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security, or, if the Securities are then held in the form of a Global Security, in accordance with the customary procedures for the Depository.

The Trustee shall promptly notify the Company in writing of the Securities selected for partial redemption and the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

Section 14.5 **Payment of Securities Called for Prepayment.**

If notice of prepayment has been given as provided in Section 14.4, the Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Prepayment Price, together with interest accrued, if any, to the date fixed for prepayment (subject to the rights of holders of Securities on the close of business on a regular record date in respect of an Interest Payment Date occurring on or prior to the prepayment date), and on and after said date (unless the Company shall default in the payment of such Securities at the Prepayment Price, together with interest, if any, accrued to said date) interest on the Securities so called for prepayment shall cease to accrue. On presentation and surrender of such Securities at a place of payment specified in said notice, the said Securities shall be paid and prepaid by the Company at the applicable Prepayment Price, together with interest accrued thereon to the date fixed for prepayment (subject to the rights of holders of Securities on the close of business on a regular record date in respect of an Interest Payment Date occurring on or prior to the prepayment date).

ARTICLE XV

SUBORDINATION OF SECURITIES

Section 15.1 **Agreement to Subordinate.**

The Company covenants and agrees, and each holder of Securities issued hereunder likewise covenants and agrees, that the Securities shall be issued subject to the provisions of this Article XV; and each holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

The payment by the Company of the principal of and premium, if any, and interest on all Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all amounts with respect to Senior Debt, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article XV shall prevent the occurrence of any Default or Event of Default hereunder.

Section 15.2 **Default on Senior Debt.**

In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Debt, or in the event that the maturity of any Senior Debt has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including prepayments) of or premium, if any, or interest on the Securities.

In the event of the acceleration of the maturity of the Securities, then no payment shall be made by the Company with respect to the principal (including prepayments) of or premium, if any, or interest on the Securities until the holders of all Senior Debt outstanding at the time of such acceleration shall receive payment in full of all amounts due in respect of such Senior Debt (including any amounts due upon acceleration).

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 15.2, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear, but only to the extent of the amounts due in respect of such Senior Debt and only to the extent that the holders of the Senior Debt (or their representative or representatives or a trustee) notify the Trustee in writing, within 90 days of such payment, of the amounts then due and owing on such Senior Debt and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Senior Debt.

Section 15.3 **Liquidation; Dissolution; Bankruptcy.**

Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Debt of the Company shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on account of the principal (and premium, if any) or interest on the Securities; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Securityholders or the Trustee would be entitled to receive from the Company, except for the provisions of this Article XV, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Securityholders or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt of the Company (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Debt in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt, before any payment or distribution is made to the Securityholders or to the Trustee.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee before all Senior Debt is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Debt or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt may have been issued, and their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay all amounts due in respect of such Senior Debt in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Debt.

For purposes of this Article XV, the words “cash, property or securities” shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article XV with respect to the Securities to the payment of Senior Debt that may at the time be outstanding, provided that (i) such Senior Debt is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Debt are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the sale, conveyance, transfer or lease of its property as an entirety, or substantially as an entirety, to another Person upon the terms and conditions provided for in Article X of this Indenture shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 15.3 if such other Person shall, as a part of such consolidation, merger, sale, conveyance, transfer or lease, comply with the conditions stated in Article X of this Indenture. Nothing in Section 15.2 or in this Section 15.3 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.6 of this Indenture.

Section 15.4 **Subrogation.**

Subject to the payment in full of all amounts due in respect of Senior Debt, the rights of the Securityholders shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Debt until the principal of (and premium, if any) and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Debt of any cash, property or securities to which the Securityholders or the Trustee would be entitled except for the provisions of this Article XV, and no payment over pursuant to the provisions of this Article XV to or for the benefit of the holders of such Senior Debt by Securityholders or the Trustee, shall, as between the Company, its creditors other than holders of Senior Debt of the Company, and the holders of the Securities, be deemed to be a payment by the Company to or on account of such Senior Debt. It is understood that the provisions of this Article XV are and are intended solely for the purposes of defining the relative rights of the holders of the Securities, on the one hand, and the holders of such Senior Debt, on the other hand.

Nothing contained in this Article XV or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt of the Company, and the holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Securities the principal of (and premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Securities and creditors of the Company, as the case may be, other than the holders of Senior Debt of the Company, as the case may be, nor shall anything herein or therein prevent the Trustee or the holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XV of the holders of such Senior Debt in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article XV, the Trustee, subject to the provisions of Article VI of this Indenture, and the Securityholders shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Securityholders, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Debt and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XV.

Section 15.5 Trustee to Effectuate Subordination.

Each Securityholder by such Securityholder's acceptance thereof authorizes and directs the Trustee on such Securityholder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XV and appoints the Trustee such Securityholder's attorney-in-fact for any and all such purposes.

Section 15.6 Notice by the Company.

The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XV. Notwithstanding the provisions of this Article XV or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XV, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Debt or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Article VI of this Indenture, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 15.6 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

The Trustee, subject to the provisions of Article VI of this Indenture, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt of the Company, as the case may be (or a trustee on behalf of such holder), to establish that such notice has been given by a holder of such Senior Debt or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of such Senior Debt to participate in any payment or distribution pursuant to this Article XV, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Debt 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 XV, 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.

Upon any payment or distribution of assets of the Company referred to in this Article XV, the Trustee and the Securityholders shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Securityholders, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Debt 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 XV.

Section 15.7 Rights of the Trustee; Holders of Senior Debt.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XV in respect of any Senior Debt at any time held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

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

Nothing in this Article XV shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.6.

Section 15.8 **Subordination May Not Be Impaired.**

No right of any present or future holder of any Senior Debt of the Company to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the Securityholders, without incurring responsibility to the Securityholders and without impairing or releasing the subordination provided in this Article XV or the obligations hereunder of the holders of the Securities to the holders of such Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Debt, or otherwise amend or supplement in any manner such Senior Debt or any instrument evidencing the same or any agreement under which such Senior Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Debt; (iii) release any Person liable in any manner for the collection of such Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

ARTICLE XVI

EXTENSION OF INTEREST PAYMENT PERIOD

Section 16.1 **Extension of Interest Payment Period.**

(a) So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time and from time to time during the term of the Securities, to defer payments of interest by extending the interest payment period of such Securities for a period not exceeding 20 consecutive quarterly periods, including the first such quarterly period during such extension period (the "Extension Period"), during which Extension Period no interest shall be due and payable; provided that no Extension Period may extend beyond the Stated Maturity. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 16.1, will bear interest thereon at the Coupon Rate compounded quarterly for each quarterly period of the Extension Period ("Compounded Interest"). At the end of the Extension Period, the Company shall pay all interest accrued and unpaid on the Securities, including any Additional Sums and Compounded Interest (together, "Deferred Interest") that shall be payable to the holders of the Securities in whose names the Securities are registered in the Security Register on the first record date after the end of the Extension Period.

(b) Before the termination of any Extension Period, the Company may further defer payments of interest by further extending such period provided that such period, together with all such previous and further extensions within such Extension Period, shall not exceed 20 consecutive quarterly periods, including the first such quarterly period during such Extension Period, or extend beyond the Stated Maturity of the Securities. Upon the termination of any Extension Period and the payment of all Deferred Interest then due, the Company may elect to commence a new Extension Period, subject to the foregoing requirements. No interest shall be due and payable during an Extension Period, except at the end thereof, but the Company may prepay at any time all or any portion of the interest accrued during an Extension Period.

Section 16.2 Notice of Extension.

(a) If the Property Trustee is the only registered holder of the Securities at the time the Company selects an Extension Period, the Company shall give written notice to the Administrative Trustees, the Property Trustee and the Trustee of its selection of such Extension Period at least five Business Days before the earlier of (i) the next succeeding date on which distributions on the Trust Securities issued by ServisFirst Capital Trust II would have been payable except for such election, or (ii) the date the Administrative Trustees are required to give notice of the record date, or the date such Distributions are payable, to any national securities exchange or to holders of the Preferred Securities issued by ServisFirst Capital Trust II, but in any event at least five Business Days before such record date.

(b) If the Property Trustee is not the only holder of the Securities at the time the Company selects an Extension Period, the Company shall give the holders of the Securities and the Trustee written notice of its selection of such Extension Period at least 10 Business Days before the earlier of (i) the next succeeding Interest Payment Date, or (ii) the date the Company is required to give notice of the record or payment date of such interest payment to any national securities exchange.

(c) The quarterly period in which any notice is given pursuant to paragraphs (a) or (b) of this Section 16.2 shall be counted as one of the 20 quarterly periods permitted in the maximum Extension Period permitted under Section 16.1. There is no limitation on the number of times that the Company may elect to begin an Extension Period.

ARTICLE XVII

MANDATORY AND OPTION CONVERSION OF SECURITIES

Section 17.1 Mandatory Conversion.

(a) To the extent not previously prepaid pursuant to Article XIV above or converted into shares of Conversion Stock pursuant to Section 17.2 below, all Securities will automatically and mandatorily convert into shares of Company Common Stock on the Mandatory Conversion Date at the Conversion Price.

(b) In order to effect such mandatory conversion, upon delivery of the Preferred Securities then issued and outstanding to the Trustee by the Conversion Agent on the Mandatory Conversion Date, as provided for in Section 5(a) of Annex I to the Trust Agreement, the Trustee shall issue Securities in exchange for such Preferred Securities and shall thereupon convert such Securities into Company Common Stock at the Conversion Price and deliver such Conversion Stock to the Conversion Agent. The Conversion Agent shall thereupon distribute such Conversion Stock as provided for in Section 5(a)(ii) of Annex I to the Trust Agreement, together with any accrued but unpaid Distributions through and including the Mandatory Conversion Date subject to any necessary regulatory approvals.

(c) The Company's delivery upon conversion of the appropriate number of shares of Conversion Stock (together with the cash payment, if any, in lieu of fractional shares) shall be deemed to satisfy the Company's obligation to pay the principal amount at maturity of the portion of Securities so converted and any unpaid interest accrued on such Securities at the time of such conversion.

(d) No fractional shares of Company Common Stock shall be issued as a result of conversion, but in lieu thereof, such fractional interest shall be paid in cash (calculated by multiplying the fractional interest by the Conversion Price), and the Conversion Agent in turn shall make such payment to the Securityholder or the holder of the Preferred Securities so converted.

Section 17.2 Conversion at Holder's Option.

(a) Subject to and upon compliance with the provisions of this Article XVII, the Securities are convertible, at the option of the Securityholder, at any time on or before the close of business on the Business Day immediately preceding the later to occur of (i) the Mandatory Conversion Date and (ii) the date of repayment of such Debentures, whether at maturity or upon redemption, into fully paid and nonassessable shares of Company Common Stock at an initial conversion ratio of 40 shares of Company Common Stock per \$1,000 principal amount of Securities, representing a conversion price of \$25.00 per share of Conversion Stock issued, subject to adjustment as provided in Section 17.3 below (as so adjusted, the "Conversion Price"); provided, however, that a Holder of Securities surrendering less than all Securities held by such Holder for conversion must surrender such Securities in increments of \$5,000 in principal amount of Securities or any integral multiple thereof. In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or portion so called shall expire at the close of business on the Business Day immediately preceding the corresponding redemption date, unless the Company defaults in making the payment due upon redemption.

(b) A Holder desiring to effect such a voluntary conversion must submit to the Conversion Agent an irrevocable request to convert Securities on behalf of such Holder (a "Conversion Request"), together with (if the Securities are held in certificated form) the certificate(s) representing the Securities to be converted. As long as Wilmington Trust Company, as the Property Trustee, is the holder of the Debentures, no request need be submitted. The Conversion Request shall be in the form contained in the certificates representing Securities or otherwise prescribed by the Conversion Agent. In addition, a holder of Preferred Securities may exercise its right under the Trust Agreement to exchange such Preferred Securities for Securities which shall be converted into Company Common Stock by delivering to the Conversion Agent an irrevocable Conversion Request setting forth the information called for by the preceding sentence and directing the Conversion Agent (i) to exchange such Preferred Security for a portion of the Securities held by the Trust (at an exchange rate of \$1,000 principal amount of Securities for each Preferred Security), and (ii) to immediately convert such Securities, on behalf of such Securityholder, into Company Common Stock pursuant to this Section 17.2 and, if such Preferred Securities are in certificate form, surrendering such Preferred Securities, duly endorsed or assigned to the Company or in blank. So long as any Preferred Securities are outstanding, the Trust shall not convert any Securities except pursuant to a Conversion Request delivered to the Conversion Agent by a holder of Preferred Securities or as provided in Section 17.1 above.

(c) Upon receipt of a properly completed and executed Conversion Request, the Trustee shall issue (if applicable) Securities in exchange for such Preferred Securities and shall thereupon convert such Securities into Company Common Stock at the Conversion Price and deliver such Conversion Stock to the Conversion Agent. The Conversion Agent shall thereupon distribute such Conversion Stock as provided for in Section 5(b)(iii) of Annex I to the Trust Agreement, together with any accrued but unpaid Distributions to the extent required under the Trust Agreement.

(d) Interest accruing between Interest Payment Dates shall not be paid on Securities that are converted pursuant to this Section 17.2, nor shall any payment, allowance or adjustment be made for accumulated and unpaid interest, whether or not in arrears, on converted Securities, except that if any Security is converted on or after a record date for payment of interest thereon and prior to the related Interest Payment Date, the amount of the interest payable on the related Interest Payment Date with respect to such Preferred Security shall be paid by the converting Holder to the Company prior to such Holder's receipt of Conversion Stock and the interest payable on the related Interest Payment Date with respect to such Security shall be distributed to the Holder on such record date, despite such conversion. The Company shall make no payment or allowance for distributions on the shares of Conversion Stock issued upon such conversion, except to the extent that such shares of Conversion Stock are held of record on the record date for any such distributions and except as provided in Section 17.3 hereof. Securities shall be deemed to have been converted immediately prior to the close of business on the day on which a Conversion Request relating to such Securities is received by the Trustee in accordance with the foregoing provisions of this Section 17.2 (the "Conversion Date"). The Person or Persons entitled to receive the Conversion Stock shall be treated for all purposes as the record holder or holders of such Conversion Stock at such time. As promptly as practicable on or after the Conversion Date, the Company shall issue and deliver at the office of the Conversion Agent a certificate or certificates for the number of full shares of Conversion Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same herein, unless otherwise directed by the Holder in the Conversion Request, and the Conversion Agent shall distribute such certificate or certificates to such Person or Persons.

(e) The Company's delivery upon conversion of the appropriate number of shares of Conversion Stock (together with the cash payment, if any, in lieu of fractional shares) shall be deemed to satisfy the Company's obligation to pay the principal amount at maturity of the portion of Securities so converted and any unpaid interest accrued on such Securities at the time of such conversion.

(f) No fractional shares of Company Common Stock shall be issued as a result of conversion, but in lieu thereof, such fractional interest shall be paid in cash (based on the Conversion Price), and the Conversion Agent in turn shall make such payment to the Securityholder or the holder of the Preferred Securities so converted.

(g) In the event of the conversion of any Security in part only, a new Security or Securities for the unconverted portion thereof shall be issued in the name of the Securityholder thereof upon the cancellation thereof.

(h) All shares of Company Common Stock issued as Conversion Stock shall be duly authorized, validly issued, fully paid and nonassessable. The Company shall at all times reserve and keep available out of its authorized and unissued Company Common Stock, solely for issuance upon the conversion of the Securities, free from any preemptive or other similar rights, such number of shares of Company Common Stock as shall from time to time be issuable upon the conversion of all of the Securities then outstanding. Notwithstanding the foregoing sentence, the Company shall be entitled to deliver, upon conversion of Securities, shares of Common Stock reacquired and held in the treasury of the Company (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such treasury shares are free and clear of all liens, charges, security interests or encumbrances.

(i) In effecting the conversion transactions described in this Section 17.2, the Conversion Agent is acting as agent of the holders of Preferred Securities (in the exchange of Preferred Securities for Securities) and as agent of the Securityholders (in the conversion of Securities into Conversion Stock), as the case may be, directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (i) to exchange Preferred Securities for Securities held by the Trust from time to time in connection with the conversion of such Preferred Securities in accordance with this Article XVII, and (ii) to convert all or a portion of the Securities into Company Common Stock and thereupon to deliver such shares of Conversion Stock in accordance with the provisions of this Article XVII and to deliver to the Trust a new Security or Securities for any resulting unconverted principal amount.

Section 17.3 **Adjustments to Conversion Price.**

The Conversion Price shall be subject to adjustment (without duplication) from time to time as follows:

(a) In case the Company shall, while any of the Securities are outstanding, (i) pay a dividend or make a distribution with respect to Company Common Stock in shares of Company Common Stock, (ii) subdivide its outstanding shares of Company Common Stock, (iii) combine its outstanding shares of Company Common Stock into a smaller number of shares, or (iv) issue by reclassification of its shares of Company Common Stock any shares of capital stock of the Company, then the Conversion Price in effect immediately prior to such action shall be adjusted so that the holders of any Securities thereafter surrendered for conversion shall be entitled to receive the number of shares of capital stock of the Company which they would have owned immediately following such action had such Securities been converted immediately prior thereto. An adjustment made pursuant to this Section 17.3(a) shall become effective immediately after the record date in the case of a dividend or other distribution and shall become effective immediately after the effective date in case of a subdivision, combination or reclassification (or immediately after the record date if a record date shall have been established for such event). If, as a result of an adjustment made pursuant to this Section 17.3(a), the holder of any Security thereafter surrendered for conversion shall become entitled to receive shares of two or more classes or series of capital stock of the Company, the Board of Directors (whose determination shall be conclusive and shall be described in a Board Resolution filed with the Indenture Trustee) shall determine the allocation of the adjusted Conversion Price between or among shares of such classes or series of capital stock.

(b) In case the Company shall, while any of the Securities are outstanding, issue rights or warrants to all holders of Company Common Stock entitling them (for a period expiring within 45 days after the record date mentioned in this Section 17.3(b)) to subscribe for or purchase shares of Company Common Stock at a price per share less than the Current Market Price (as defined below) per share of Company Common Stock on such record date, then the Conversion Price for the Securities shall be adjusted based on the ratio determined by multiplying the Conversion Price in effect immediately prior to the date of issuance of such rights or warrants by a fraction of which the numerator shall be the number of shares of Company Common Stock outstanding on the date of issuance of such rights or warrants plus the number of additional shares of Company Common Stock offered for subscription or purchase, and of which the denominator shall be the number of shares of Company Common Stock outstanding on the date of issuance of such rights or warrants plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase would purchase at such Current Market Price. Such adjustment shall become effective immediately after the record date for the determination of shareholders entitled to receive such rights or warrants. For the purposes of this Section 17.3(b), the number of shares of Company Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company shall not issue any rights or warrants in respect of the shares of Company Common Stock held in the treasury of the Company. In case any rights or warrants referred to in this Section 17.3 (b) in respect of which an adjustment shall have been made shall expire unexercised within 45 days after the same shall have been distributed or issued by the Company, the Conversion Price shall be readjusted at the time of such expiration to the Conversion Price that would have been in effect if no adjustment had been made on account of the distribution or issuance of such expired rights or warrants.

(c) Subject to the last sentence of this Section 17.3(c), in case the Company shall, by dividend or otherwise, distribute to all holders of Company Common Stock evidences of its indebtedness, shares of any class or series of capital stock, cash or assets (including securities, but excluding any rights or warrants referred to in Section 17.3(b)), any dividend or distribution paid exclusively in cash and any dividend or distribution referred to in Section 17.3(a)), then the Conversion Price shall be increased based upon the ratio determined by multiplying the Conversion Price in effect immediately prior to the effectiveness of the Conversion Price increase contemplated by this Section 17.3(c) by a fraction, the numerator of which shall be the Current Market Price per share of Company Common Stock on the date fixed for the payment of such distribution (the "Reference Date"), and the denominator of which shall be the Current Market Price per share of the Company Common Stock on the Reference Date less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), on the Reference Date, of the portion of the evidences of indebtedness, shares of capital stock, cash and assets so distributed applicable to one share of Company Common Stock, such increase to become effective immediately prior to the opening of business on the day following the Reference Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not occurred. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 17.3(c) by reference to the actual or when issued trading market for any securities comprising such distribution, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price per share of Company Common Stock. For purposes of this Section 17.3(c), any dividend or distribution that includes shares of Company Common Stock or rights or warrants to subscribe for or purchase shares of Company Common Stock shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, shares of capital stock, cash or assets other than such shares of Company Common Stock or such rights or warrants (making any Conversion Price increase required by this Section 17.3(c)) immediately followed by (2) a dividend or distribution of such shares of Company Common Stock or such rights or warrants (making any further Conversion Price increase required by Section 17.3(a) or 17.3(b)), except (A) the Reference Date of such dividend or distribution as defined in this Section 17.3(c) shall be substituted as (x) the record date in the case of a dividend or other distribution, and (y) the record date for the determination of shareholders entitled to receive such rights or warrants, and (c) the date fixed for such determination within the meaning of Sections 17.3(a) and 17.3(b), and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed outstanding for purposes of computing any adjustment of the Conversion Price in Section 17.3(a).

(d) In case the Company shall pay or make a dividend or other distribution on Company Common Stock exclusively in cash (excluding all cash dividends paid out of the retained earnings of the Company), then the Conversion Price shall be increased based upon the ratio determined by multiplying the Conversion Price in effect immediately prior to the effectiveness of the Conversion Price increase contemplated by this Section 17.3(d) by a fraction, the numerator of which shall be the Current Market Price per share of Company Common Stock, and the denominator of which shall be the Current Market Price per share of Company Common Stock on the date fixed for the payment of such distribution less the amount of cash so distributed and not excluded as provided applicable to one share of Company Common Stock on the date fixed for the payment of such distribution, such increase to become effective immediately prior to the opening of business on the day following the date fixed for the payment of such distribution; provided, however, that in the event the portion of the cash so distributed applicable to one share of Company Common Stock is equal to or greater than the Current Market Price per share of Company Common Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Securityholder shall have the right to receive upon conversion the amount of cash such Securityholder would have received had such Securityholder converted each Security immediately prior to the record date for the distribution of the cash. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such record date had not been fixed.

(e) In case a tender or exchange offer (other than an odd-lot offer) made by the Company or any subsidiary of the Company for all or any portion of the Company Common Stock shall expire and such tender or exchange offer shall involve the payment by the Company or such subsidiary of consideration per share of Company Common Stock having a fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds 110% of the Current Market Price per share of Company Common Stock on the Trading Day (as defined in Section 17.7(b)) next succeeding the Expiration Time, then the Conversion Price shall be increased based upon the ratio determined by multiplying the Conversion Ratio in effect immediately prior to the effectiveness of the Conversion Ratio increase contemplated by this Section 17.3(e) by a fraction, the numerator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to shareholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the Purchased Shares), and (y) the product of the number of shares of Company Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Current Market Price per share of Company Common Stock on the Trading Day next succeeding the Expiration Time, and the denominator of which shall be the number of shares of Company Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Current Market Price per share of Company Common Stock on the Trading Day next succeeding the Expiration Time, such increase to become effective immediately prior to the opening of business on the day following the Expiration Time.

(f) For the purpose of any computation under Sections 17.3(b), (c), (d) or (e), the Current Market Price per share of Company Common Stock on any date in question shall be deemed to be the average of the daily Closing Prices (as defined in Section 17.7) for the five consecutive Trading Days selected by the Company commencing not more than 20 Trading Days before, and ending not later than the earlier of the day in question or, if applicable, the day before the ex date (defined below) with respect to the issuance or distribution requiring such computation; provided, however, that if another event occurs that would require an adjustment pursuant to Sections 17.3(a) through (e), inclusive, the Board of Directors may make such adjustments to the Closing Prices during such five-Trading Day period as it deems appropriate to effectuate the intent of the adjustments in this Section 17.3, in which case any such determination by the Board of Directors shall be set forth in a Board Resolution and shall be conclusive. For purposes of this Section 17.3(f), the term ex date, (i) when used with respect to any issuance or distribution, means the first date on which the Company Common Stock trades regular way in the relevant market from which the Closing Prices were obtained without the right to receive such issuance or distribution, and (ii) when used with respect to any tender or exchange offer, means the first date on which the Company Common Stock trades regular way in such market after the Expiration Time of such offer.

(g) The Company may make such decreases in the Conversion Price, in addition to those required by Sections (a) through (e), as it considers to be advisable to avoid or diminish any income tax to holders of Company Common Stock or rights to purchase Company Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. The Company from time to time may decrease the Conversion Price by any amount for any period of time if the period is at least 20 days, the decrease is irrevocable during the period, and the Board of Directors shall have made a determination that such decrease would be in the best interest of the Company, which determination shall be conclusive. Whenever the Conversion Price is decreased pursuant to the preceding sentence, the Company shall mail to Securityholders of record a notice of the decrease at least fifteen days prior to the date the increased Conversion Price takes effect, and such notice shall state the increased Conversion Price and the period it shall be in effect.

(h) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price; provided, however, that any adjustments which by reason of this Section 17.3(h) are not required to be made shall be carried forward and taken into account in determining whether any subsequent adjustment shall be required. The adjusted Conversion Price will be rounded to two decimal places.

(i) If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described above, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest absolute value to the Securityholders.

Section 17.4 **Reclassification, Consolidation, Merger or Sale Of Assets.**

In the event that the Company shall be a party to any transaction, including without limitation (a) any recapitalization or reclassification of the Company Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of the Company Common Stock), (b) any consolidation of the Company with, or merger of the Company into any other Person, any merger of another Person into the Company (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company), (c) any sale, transfer or lease of all or substantially all of the assets of the Company, or (d) any compulsory share exchange, in each case pursuant to which the Company Common Stock is converted into the right to receive other securities, cash or other property, then lawful provision shall be made as part of the terms of such transaction whereby the holder of each Security then outstanding shall have the right thereafter to convert each Security only into the kind and amount of securities, cash or other property receivable upon consummation of such transaction by a holder of the number of shares of Company Common Stock into which such Security could have been converted immediately prior to such transaction.

The Company or the Person formed by such consolidation or resulting from such merger or which acquired such assets or which acquires the shares of the Company, as the case may be, shall make provision in its certificate or articles of incorporation or other constituent document to establish such right. Such certificate or articles of incorporation or other constituent document shall provide for adjustments which, for events subsequent to the effective date of such certificate or articles of incorporation or other constitution document, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article XVII. The above provisions shall similarly apply to successive transactions of the foregoing type.

Section 17.5 **Notice of Adjustments of Conversion Price.**

Whenever the Conversion Price is adjusted as herein provided:

(a) The Company shall compute the adjusted or readjusted Conversion Price and shall prepare an Officers' Certificate setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the Trustee, the Conversion Agent and the transfer agent for the Preferred Securities and the Securities; and

(b) a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Ratio shall as soon as practicable be mailed by the Company to all record holders of Preferred Securities and Securities at their last addresses as they appear upon the Securities Register of the Trust (as defined in the Trust Agreement) and the Security Register of the Company.

Section 17.6 **Prior Notice of Certain Events.**

In case:

(a) the Company shall (i) declare any dividend (or any other distribution) on Company Common Stock, other than (A) a dividend payable in shares of Company Common Stock, or (B) a dividend payable in cash that would not require an adjustment pursuant to Section 17.3(c) or (d), or (ii) authorize a tender or exchange offer that would require an adjustment pursuant to Section 17.3(e);

(b) the Company shall authorize the granting to all holders of Company Common Stock of rights or warrants to subscribe for or purchase any shares of stock of any class or series or of any other rights or warrants;

(c) of any reclassification of Company Common Stock (other than a subdivision or combination of the outstanding Company Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company shall be required, or the sale or transfer of all or substantially all of the assets of the Company or of any compulsory share exchange whereby the Company Common Stock is converted into other securities, cash or other property; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall (1) if any Preferred Securities are outstanding, cause to be filed with the transfer agent for the Preferred Securities, and shall cause to be mailed to the holders of record of the Preferred Securities, at their last addresses as they shall appear upon the Securities Register of the Trust (as defined in the Trust Agreement), or (2) shall cause to be mailed to all Securityholders at their last addresses as they shall appear in the Security Register, at least 15 days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record (if any) is to be taken for the purpose of such dividend, distribution, rights or warrants or, if a record is not to be taken, the date as of which the holders of Company Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Company Common Stock of record shall be entitled to exchange their shares of Company Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up (but no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the corporate action required to be specified in such notice).

Section 17.7 **Certain Defined Terms.**

The following definitions shall apply to terms used in this Article XVII:

(a) "Closing Price" of any security on any day means the last reported sale price for such security on such day or, if no sale takes place on such day, the average of the reported closing bid and asked prices on such day of such security, in either case as reported on the principal quotation system or securities exchange on which such security is listed or admitted to trading or quoted, or, if not listed or admitted to trading or quoted on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security in the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or, if not so available in such manner, as furnished by any Nasdaq member firm selected from time to time by the Board of Directors for that purpose or, if not so available in such manner, as otherwise determined in good faith by the Board of Directors.

(b) "Trading Day" means a day on which securities are traded on the national securities exchange or quotation system used to determine the Closing Price or, if the Closing Price is determined based upon one of the other permitted methods in Section 17.7(a), a day on which securities are traded on the Nasdaq Global Market.

Section 17.8 **Dividend or Interest Reinvestment Plans.**

Notwithstanding the foregoing provisions, the issuance of any shares of Company Common Stock pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Company Common Stock under any such plan, and the issuance of any shares of Company Common Stock or options or rights to purchase such shares pursuant to any employee benefit plan or program of the Company or pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Securities were first issued, shall not be deemed to constitute an issuance of Company Common Stock or exercisable, exchangeable or convertible securities by the Company to which any of the adjustment provisions described above shall apply. There also shall be no adjustment of the Conversion Price in case of the issuance of any stock (or securities convertible into or exchangeable for stock) of the Company except as specifically described in this Article XVII.

Section 17.9 **Certain Additional Rights.**

In case the Company shall, by dividend or otherwise, declare or make a distribution on Company Common Stock referred to in Section 17.3(c) or (d) (including, without limitation, dividends or distributions referred to in the last sentence of Section 17.3(c)), then the Securityholders, upon the conversion thereof subsequent to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution and prior to the effectiveness of the Conversion Price adjustment in respect of such distribution, also shall be entitled to receive for each share of Company Common Stock into which the Securities are converted, the portion of the shares of Company Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash and assets so distributed applicable to one share of Company Common Stock; provided, however, that, at the election of the Company (whose election shall be evidenced by a Board Resolution) with respect to all Securityholders so converting, the Company may, in lieu of distributing to such Securityholder any portion of such distribution not consisting of cash or securities of the Company, pay such Securityholder an amount in cash equal to the fair market value thereof (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution). If any conversion of Securities described in the immediately preceding sentence occurs prior to the payment date for a distribution to holders of Company Common Stock which the Securityholders so converted is entitled to receive in accordance with the immediately preceding sentence, the Company may elect (such election to be evidenced by a Board Resolution) to distribute to such Securityholder a due bill for the shares of Company Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash or assets to which such Securityholder is so entitled, provided, that such due bill (i) meets any applicable requirements of the principal national securities quotation system or other market in, on or by which the Company Common Stock is then traded, listed or quoted, and (ii) requires payment or delivery of such shares of Company Common Stock, rights, warrants, evidences of indebtedness, shares of capital stock, cash or assets no later than the date of payment or delivery thereof to holders of shares of Company Common Stock receiving such distribution.

Section 17.10 **Trustee Not Responsible for Determining Conversion Price or Adjustments.**

Neither the Trustee nor any Conversion Agent shall at any time be under any duty or responsibility to any Securityholder or holder of Preferred Securities to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind of account) of any shares of Company Common Stock or of any securities or property, which may at any time be issued or delivered upon the conversion of any Security; and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Company Common Stock or stock certificates or other securities or property upon the surrender of any Security or Preferred Security for the purpose of conversion, or, except as expressly herein provided, to comply with any of the covenants of the Company contained in Article III or this Article XVII.

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

SERVISFIRST BANCSHARES, INC.

By: /s/ Thomas A. Broughton III
Thomas A. Broughton III
Title: President and Chief Executive Officer

WILMINGTON TRUST COMPANY,
as Trustee

By: /s/ Christopher J. Slaybaugh
Authorized Officer

EXHIBIT A

(FORM OF FACE OF SECURITY)

THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR ANY APPLICABLE STATE SECURITIES LAW. THIS SECURITY HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO OR FOR RESALE IN CONNECTION WITH THE DISTRIBUTION THEREOF. NO DISPOSITION OF THIS SECURITY MAY BE MADE IN THE ABSENCE OF (I) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (II) PURSUANT TO AN EXEMPTION FROM OR A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAW.

[Certificated Securities Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

[Global Securities Legend]

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

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

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

[If the security is issued upon dissolution of ServisFirst Capital Trust II pursuant to Section 2.5 of the Indenture, insert:]

EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF Section 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A OR REGULATION D THEREUNDER OR ANOTHER AVAILABLE EXEMPTION. EACH HOLDER OF THIS SECURITY REPRESENTS TO SERVISFIRST BANCSHARES, INC. THAT (A) SUCH HOLDER WILL NOT SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY (WITHOUT THE CONSENT OF SERVISFIRST BANCSHARES, INC.) OTHER THAN (I) TO SERVISFIRST BANCSHARES, INC., (II) IN THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION COMPLYING WITH THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (III) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT, (IV) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT SUBJECT IN THE CASE OF CLAUSE (II), (III) OR (IV) TO THE RECEIPT BY THE REGISTRAR (AND SERVISFIRST BANCSHARES, INC., IF IT SO REQUESTS) OF AN OPINION OF COUNSEL OR SUCH OTHER EVIDENCE ACCEPTABLE TO SERVISFIRST BANCSHARES, INC. THAT SUCH RESALE, PLEDGE OR TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR (V) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, AND THAT (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY OF THE RESALE RESTRICTIONS REFERRED TO HEREIN AND DELIVER TO THE TRANSFEREE (OTHER THAN A QUALIFIED INSTITUTIONAL BUYER) PRIOR TO THE SALE A COPY OF THE TRANSFER RESTRICTIONS APPLICABLE HERETO (COPIES OF WHICH MAY BE OBTAINED FROM THE TRUSTEE).

SERVISFIRST BANCSHARES, INC.
6.0% JUNIOR SUBORDINATED MANDATORY CONVERTIBLE DEFERRABLE
INTEREST DEBENTURE
DUE MARCH 15, 2040

ServisFirst Bancshares, Inc., a Delaware corporation (the "Company", which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of \$ _____ Dollars on March 15, 2040 (the "Stated Maturity"), unless previously prepaid, and to pay interest on the outstanding principal amount hereof from _____, 20____, or from the most recent interest payment date to which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on June 15, September 15, December 15 and March 15 of each year (each such date, an "Interest Payment Date"), commencing June 15, 2010, until the principal hereof shall have become due and payable, and on any overdue principal and premium, if any, and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded quarterly. The amount of interest payable on any Interest Payment Date shall be computed on the basis of the actual number of days elapsed over a 360-day year of twelve 30-day months. In the event that any date on which the principal of (or premium, if any) or interest on this Security is payable is not a Business Day, then payment payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date.

This Security will bear interest during the Interest Period at the rate of 6.0% per annum during its term from the Issue Date and ending on March 15, 2040.

The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities, as defined in said Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be the fifteenth day (whether or not a Business Day) next preceding the relevant Interest Payment Date. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the holders on such regular record date and may be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted interest, notice whereof shall be given to the holders of Securities not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

The principal of (and premium, if any) and interest on this Security shall be payable at the office or agency of the Property Trustee (or other paying agent appointed by the Company) maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that, payment of interest may be made at the option of the Company by (i) check mailed to the holder at such address as shall appear in the Security Register or (ii) by wire transfer to an account maintained by the Person entitled thereto, provided that proper written transfer instructions have been received by the relevant record date; provided that if this Security is in global form, the interest hereon shall be made in immediately available funds. Notwithstanding the foregoing, so long as the Holder of this Security is the Property Trustee, the payment of the principal of (and premium, if any) and interest on this Security will be made at such place and to such account as may be designated by the Property Trustee.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Security shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Security are continued on the reverse side hereof and such provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company, under its corporate seal, has caused this instrument to be executed.

Dated: _____

SERVISFIRST BANCSHARES, INC.

By: _____
Thomas A. Broughton III
Its: President and CEO

Attest:

By: _____
William M. Foshee
Secretary

[SEAL]

(FORM OF CERTIFICATE OF AUTHENTICATION)

CERTIFICATE OF AUTHENTICATION

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

WILMINGTON TRUST COMPANY,
as Trustee

By: _____
Authorized Officer

[SEAL]

(FORM OF REVERSE OF SECURITY)

This Security is one of the Securities of the Company (herein sometimes referred to as the "Securities"), specified in the Indenture, all issued or to be issued under and pursuant to an Indenture, dated as of March 15, 2010 (the "Indenture"), duly executed and delivered between the Company and Wilmington Trust Company, as Trustee (the "Trustee"), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Securities.

Upon the occurrence and continuation of a Special Event, the Company shall have the right to prepay this Security in whole (but not in part) at the Prepayment Price.

"Prepayment Price" means, with respect to any prepayment of the Securities, an amount in cash equal to 100% of the principal amount of the Securities to be prepaid, plus accrued and unpaid interest thereon, including Compounded Interest and Additional Sums, if any, to the date of such prepayment.

The Prepayment Price shall be paid prior to 12:00 noon, New York City time, on the date of such prepayment, provided, that the Company shall deposit with the Trustee an amount sufficient to pay the Prepayment Price by 10:00 a.m., New York City time, on the date the Prepayment Price is to be paid. Any prepayment pursuant to this paragraph will be made upon not less than 30 days' nor more than 60 days' notice.

Any Securityholder has the right, exercisable at any time after issuance, and on or before the close of business on the Business Day immediately preceding the date of repayment of the Securities, whether at maturity or upon redemption, to convert the principal amount thereof (or any portion thereof that is an integral multiple of \$5,000) into fully paid and nonassessable shares of Company Common Stock at an initial conversion price of \$25.00 per share of Company Common Stock, subject to adjustment under certain circumstances (the "Conversion Price"). The number of shares of Company Common Stock issuable upon conversion of a principal amount of Securities shall be determined by dividing (1) the aggregate principal amount of the Securities to be converted by (B) the Conversion Price. No fractional shares of Company Common Stock shall be issued upon conversion and, in lieu thereof, a cash payment shall be made for any fractional interest, based upon Conversion Price. The outstanding principal amount of any Security shall be reduced by the portion of the principal amount thereof converted into shares of Company Common Stock.

To convert a Security, a Securityholder must (i) complete and sign a Conversion Request substantially in the form attached hereto, (ii) surrender the Security to the Conversion Agent, (iii) furnish appropriate endorsements or transfer documents if required by the Security Registrar or Conversion Agent, and (iv) pay any transfer or similar tax, if required. If a Conversion Request is delivered on or after the regular record date and prior to the subsequent Interest Payment Date, the Securityholder shall be required to pay to the Company the interest payment to be made on the subsequent Interest Payment Date, and shall be entitled to receive the interest payable on the subsequent Interest Payment Date, on the portion of Securities to be converted notwithstanding the conversion thereof prior to such Interest Payment Date. Notwithstanding the foregoing, if, during an Extended Interest Payment Period, a notice of redemption is mailed pursuant to the Indenture and a Security is converted after such mailing but prior to the relevant redemption date, all accrued but unpaid interest through the date of conversion shall be paid to the Securityholder on the redemption date. Except as otherwise provided in the immediately preceding two sentences, in the case of any Security which is converted, interest with an Interest Payment Date which is after the date of conversion of such Security shall not be payable, and the Company shall not make or be required to make any other payment, adjustment or allowance with respect to accrued but unpaid interest on the Securities being converted, which shall be deemed to be paid in full. If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall be paid to the Company upon Company request or, if then held by the Company, shall be discharged from such trust.

To the extent not previously prepaid pursuant to Article XIV of the Indenture or converted into shares of Company Stock pursuant to Section 17.2 of the Indenture, all Securities will automatically and mandatorily convert into shares of Company Common Stock on the Mandatory Conversion Date, March 15, 2013, at the Conversion Price.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Securities may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of a majority in aggregate principal amount of the Securities at the time outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the holders of the Securities; provided, however, that no such supplemental indenture shall, without the consent of each holder of Securities then outstanding and affected thereby, (i) extend the Stated Maturity of any Securities, or reduce the principal amount thereof, or reduce any amount payable on prepayment thereof, or reduce the rate or extend the time of payment of interest thereon (subject to Article XVI of the Indenture), or make the principal of, or interest or premium on, the Securities payable in any coin or currency other than U.S. dollars, or impair or affect the right of any holder of Securities to institute suit for the payment thereof, or (ii) reduce the aforesaid percentage of Securities, the holders of which are required to consent to any such supplemental indenture. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Securities at the time outstanding affected thereby, on behalf of all of the holders of the Securities, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities or a default in respect of any covenant or provision under which the Indenture cannot be modified or amended without the consent of each holder of Securities then outstanding. Any such consent or waiver by the holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Security and of any Security issued in exchange heretofore or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Security at the time and place and at the rate and in the money herein prescribed.

The Company shall have the right, at any time and from time to time during the term of the Securities, to defer payments of interest by extending the interest payment period of such Securities for a period not exceeding 20 consecutive quarterly periods, including the first such quarterly period during such extension period, and not to extend beyond the Stated Maturity of the Securities (an "Extension Period"), at the end of which period the Company shall pay all interest then accrued and unpaid together with interest thereon at the rate specified for the Securities (to the extent that payment of such interest is enforceable under applicable law). Before the termination of any such Extension Period, the Company may further defer payments of interest by further extending such Extension Period, provided that such Extension Period, together with all such previous and further extensions within such Extension Period, shall not exceed 20 consecutive quarterly periods, including the first quarterly period during such Extension Period, or extend beyond the Stated Maturity of the Securities. Upon the termination of any such Extension Period and the payment of all accrued and unpaid interest and any additional amounts then due, the Company may commence a new Extension Period, subject to the foregoing requirements.

The Company has agreed that it will not (i) 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 (which includes common and preferred stock) or (ii) make any payment of principal, interest or premium, if any, on or repay or repurchase or redeem any debt securities of the Company that rank *pari passu* with or junior in right of payment to the Securities or make any guarantee payments with respect to any guarantee by the Company of the debt securities or any Subsidiary of the Company if such guarantee ranks *pari passu* or junior in right of payment to the Securities (other than (a) dividends or distributions in shares of, or options, warrants or rights to subscribe for or purchase shares of, Common Stock of the Company, (b) any declaration of a dividend in connection with the implementation of a stockholder's 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, (c) payments under the Preferred Securities Guaranty, (d) as a result of a reclassification of the Company's capital stock or the exchange or the conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock, (e) the purchase of fractional interests in shares of the Company's capital stock pursuant to the exchange or conversion of such capital stock or the security being exchanged or converted, and (f) purchases or issuances of Common Stock in connection with any of the Company's stock option, stock purchase, stock loan or other benefit plans for its directors, officers or employees or any of the Company's dividend reinvestment plans, in each case as now existing or hereinafter established or amended) if at such time (i) there shall have occurred any event of which the Company has actual knowledge that (a) is, or with the giving of notice or the lapse of time, or both, would be, an Event of Default and (b) in respect of which the Company shall not have taken reasonable steps to cure, (ii) if such Securities are held by ServisFirst Capital Trust II, the Company shall be in default with respect to its payment of any obligations under the Preferred Securities Guaranty or (iii) the Company shall have given notice of its election of the exercise of its right to extend the interest payment period and any such extension shall be continuing.

The Company will have the right at any time to liquidate ServisFirst Capital Trust II and cause the Securities to be distributed to the holders of the Trust Securities in liquidation of ServisFirst Capital Trust II.

The Securities are issuable only in registered form without coupons in denominations of \$1 and any integral multiple thereof. As provided in the Indenture and subject to the transfer restrictions limitations as may be contained herein and therein from time to time, the transfer of this Security is registrable by the holder hereof on the Security Register of the Company, upon surrender of this Security for registration of transfer at the office or agency of the Trustee accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of authorized denominations and for the same aggregate principal amount and series will be issued to the designated transferee or transferees. No service charge will be made for any such registration of transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Security, the Company, the Trustee, any paying agent and the registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Security shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal hereof and premium, if any, and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any registrar shall be affected by any notice to the contrary.

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

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

THE INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.

FORM OF CONVERSION REQUEST

To: Servisfirst Bancshares, Inc. and Wilmington Trust Company, or any successor Conversion Agent:

The undersigned owner of these Securities hereby irrevocably elects to convert these Securities, or the portion below designated, into Company Common Stock in accordance with the terms of the Indenture (the "Indenture"), dated as of March 15, 2010, between ServisFirst Bancshares, Inc., and Wilmington Trust Company, as Trustee.

The undersigned owner of these Securities hereby directs the Conversion Agent to convert such Securities on behalf of the undersigned, into Company Common Stock (at the Conversion Price specified in the Indenture). The undersigned owner of these Securities also hereby notifies the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, should be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. (If shares are to be issued in the name of a person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.)

Date: _____

Principal Amount of Securities to be converted (\$25,000 or integral multiples thereof): \$ _____

If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Company Common Stock are to be issued, along with the address or addresses of such person or persons:

(Sign exactly as your name appears on the other side of this Security)

(for conversion only)

Please print or type name and address, including zip code, and social security or other identifying number:

Name: _____

Address: _____

SSN/TIN: _____

Signature Guarantee:* _____

* Signature must be guaranteed by an eligible guarantor institution that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program (STAMP) or such other signature guarantee program as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.

EXHIBIT B

CERTIFICATE TO TRUSTEE

Pursuant to Section 3.5 of the Indenture between ServisFirst Bancshares, Inc. as the Company (the "Company"), and Wilmington Trust Company, as Trustee, dated as of March 15, 2010 (the "Indenture"), the undersigned hereby certifies as follows:

1. In my capacity as an officer of the Company, I would normally have knowledge of any default by the Company during the last fiscal year in the performance of any covenants of the Company contained in the Indenture.
2. [To my knowledge, the Company is not default in the performance of any covenants contained in the Indenture.

or, alternatively:

I am aware of the default(s) in the performance of covenants in the Indentures, as specified below.] ***PLEASE PICK THE SENTENCE THAT APPLIES and DELETE THE ONE THAT DOES NOT.***

Capitalized terms used herein, and not otherwise defined herein, have the respective meanings ascribed to thereto in the Indenture.

IN WITNESS WHEREOF, the undersigned has executed this Officers' Certificate.

Date: _____, 20__

Name:
Title:

Name:
Title:

B-1

PREFERRED SECURITIES GUARANTY AGREEMENT

SERVISFIRST BANCSHARES, INC.

MARCH 15, 2010

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PREFERRED SECURITIES GUARANTY AGREEMENT

This PREFERRED SECURITIES GUARANTY AGREEMENT (the “Preferred Securities Guaranty”), dated as of March 15, 2010, is executed and delivered by **ServisFirst Bancshares, Inc.**, a Delaware corporation (the “Guarantor”), and **Wilmington Trust Company**, a Delaware banking corporation, as trustee (the “Preferred Securities Guaranty Trustee”), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of ServisFirst Capital Trust II, a Delaware statutory trust (the “Issuer”).

WHEREAS, pursuant to an Amended and Restated Trust Agreement (the “Trust Agreement”), dated as of March 15, 2010, among the trustees of the Issuer, the Guarantor, as sponsor, and the holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing on the date hereof 15,000 preferred securities, having an aggregate liquidation amount of \$15,000,000, such preferred securities being designated the 6.0% Preferred Securities (collectively the “Preferred Securities”).

WHEREAS, as incentive for the Holders to purchase the Preferred Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Preferred Securities Guaranty, to pay to the Holders of the Preferred Securities the Guaranty Payments (as defined below). The Guarantor agrees to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of Preferred Securities, which purchase the Guarantor hereby acknowledges shall benefit the Guarantor, the Guarantor executes and delivers this Preferred Securities Guaranty for the benefit of the Holders.

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

Section 1.1 Definitions and Interpretation

In this Preferred Securities Guaranty, unless the context otherwise requires:

(a) capitalized terms used in this Preferred Securities Guaranty but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;

(b) terms defined in the Trust Agreement as at the date of execution of this Preferred Securities Guaranty have the same meaning when used in this Preferred Securities Guaranty unless otherwise defined in this Preferred Securities Guaranty;

(c) a term defined anywhere in this Preferred Securities Guaranty has the same meaning throughout;

(d) all references to “the Preferred Securities Guaranty” or “this Preferred Securities Guaranty” are to this Preferred Securities Guaranty as modified, supplemented or amended from time to time;

(e) all references in this Preferred Securities Guaranty to Articles and Sections are to Articles and Sections of this Preferred Securities Guaranty, unless otherwise specified;

(f) a term defined in the Trust Indenture Act has the same meaning when used in this Preferred Securities Guaranty, unless otherwise defined in this Preferred Securities Guaranty or unless the context otherwise requires; and

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

“Affiliate” has the same meaning as given to that term in Rule 405 under the Securities Act of 1933, as in effect from time to time, or any successor rule thereunder.

“Business Day” means any day other than a Saturday or a Sunday, or a day on which banking institutions in The City of New York or Wilmington, Delaware are authorized or required by law or executive order to close.

“Common Securities” means the securities representing common undivided beneficial interests in the assets of the Issuer.

“Corporate Trust Office” means the office of the Preferred Securities Guaranty Trustee at which the corporate trust business of the Preferred Securities Guaranty Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Agreement is located at Rodney Square North, 1100 Market Square North, Attention: Corporate Trust Administration.

“Covered Person” means any Holder or beneficial owner of Preferred Securities.

“Debentures” means the series of subordinated debt securities of the Guarantor designated the 6.0% Junior Subordinated Mandatory Convertible Deferrable Interest Debentures due March 15, 2040 held by the Property Trustee (as defined in the Trust Agreement) of the Issuer.

“Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Preferred Securities Guaranty.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time, or any successor legislation.

“GAAP” means generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Guarantor and its subsidiaries throughout the period indicated and consistent with the prior financial practice of the Guarantor and its subsidiaries.

“Guaranty Payments” means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by the Issuer: (i) any accumulated and unpaid Distributions (as defined in the Trust Agreement) that are required to be paid on such Preferred Securities to the extent the Issuer has funds on hand legally available therefor at such time, (ii) the redemption price, including all accumulated and unpaid Distributions to the date of redemption (the “Redemption Price”) to the extent the Issuer has funds on hand legally available therefor at such time, with respect to any Preferred Securities called for redemption by the Issuer, and (iii) upon a voluntary or involuntary termination and liquidation of the Issuer (other than in connection with the distribution of Debentures to the Holders in exchange for Preferred Securities as provided in the Trust Agreement), the lesser of (a) the aggregate of the liquidation amount and all accumulated and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer has funds on hand legally available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer.

“Holder” shall mean any holder, as registered on the books and records of the Issuer, of any Preferred Securities; provided, however, that, in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor or any Affiliate of the Guarantor.

“Indemnified Person” means the Preferred Securities Guaranty Trustee, any Affiliate of the Preferred Securities Guaranty Trustee, or any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Preferred Securities Guaranty Trustee.

“Indenture” means the Indenture dated as of March 15, 2010, among the Guarantor (the “Debenture Issuer”) and Wilmington Trust Company, as trustee, pursuant to which the Debentures are to be issued to the Property Trustee of the Issuer.

“Majority in liquidation amount of the Preferred Securities” means, except as provided by the Trust Indenture Act, a vote by Holder(s) of Preferred Securities, voting separately as a class, of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined) of all Preferred Securities.

“Officers’ Certificate” means, with respect to any person, a certificate signed by two of the following: the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Secretary or the Treasurer of the Guarantor. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Preferred Securities Guaranty shall include:

- (a) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officer’s Certificate;
- (c) a statement that each such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

“Other Debentures” means all junior subordinated debentures issued by the Guarantor from time to time and sold to trusts to be established by the Guarantor (if any), in each case similar to the Issuer.

“Other Guaranties” means all guaranties hereafter issued by the Guarantor with respect to preferred securities (if any) similar to the Preferred Securities issued by other trusts to be established by the Guarantor (if any), in each case similar to the Issuer.

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

“Preferred Securities Guaranty Trustee” means Wilmington Trust Company until a Successor Preferred Securities Guaranty Trustee has been appointed and has accepted such appointment pursuant to the terms of this Preferred Securities Guaranty, and thereafter means each such Successor Preferred Securities Guaranty Trustee.

“Responsible Officer” means, with respect to the Preferred Securities Guaranty Trustee, any officer assigned to the Corporate Trust Office, including any managing director, vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Preferred Securities Guaranty Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Successor Preferred Securities Guaranty Trustee” means a successor Preferred Securities Guaranty Trustee possessing the qualifications to act as Preferred Securities Guaranty Trustee under Section 4.1.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as in effect from time to time.

“Trust Securities” means the Common Securities and the Preferred Securities.

ARTICLE II
TRUST INDENTURE ACT

Section 2.1 Trust Indenture Act: Application.

(a) This Preferred Securities Guaranty is not subject to or governed by the Trust Indenture Act except to the extent set forth herein as expressly agreed to by the parties to this Preferred Securities Guaranty.

(b) The Preferred Securities Guaranty Trustee shall comply with the obligations set forth under Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

Section 2.2 Lists of Holders of Securities

[Intentionally Omitted].

Section 2.3 Reports by the Preferred Securities Guaranty Trustee

(a) Within 60 days after September 2 of each year, commencing September 2, 2009, the Preferred Securities Guaranty Trustee shall provide to the Holders a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):

(1) The character and amount of any advances made by it, as Preferred Securities Guaranty Trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Preferred Securities, on the trust estate or on property or funds held or collected by it as the Preferred Securities Guaranty Trustee, if such advances so remaining unpaid aggregate more than one-half of one per centum of the principal amount of the Preferred Securities outstanding on such date;

(2) Any change to the amount, interest rate, and maturity date of all other indebtedness owing to it in its individual capacity, on the date of such report, by the Guarantor, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 2.1(b);

(3) Any change to the property and funds physically in its possession as Preferred Securities Guaranty Trustee on the date of such report;

(4) Any additional issue of Preferred Securities which it has not previously reported; and

(5) Any action taken by it in the performance of its duties under the Preferred Securities Guaranty which it has not previously reported and which in its opinion materially affects the Preferred Securities or the trust estate.

(b) The Preferred Securities Guaranty Trustee shall transmit to the Holders a brief report with respect to the character and amount of any advances made by it as such since the date of the last report transmitted pursuant to the provisions of subsection (a) (or if no such report has yet been so transmitted, since the date of execution of the Preferred Securities Guaranty), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Preferred Securities, on the trust estate or on property or funds held or collected by it as such Preferred Securities Guaranty Trustee, and which it has not previously reported pursuant to this paragraph, if such advances remaining unpaid at any time aggregate more than 10 per centum of the principal amount of Preferred Securities outstanding at such time, such report to be so transmitted within 90 days after such time.

(c) Reports pursuant to this section shall be transmitted by mail:

(1) To all registered holders of Preferred Securities, as the names and addresses of such Holders appear upon the registration books of the Issuer; and

(2) To such holders of Preferred Securities as have, within the two years preceding such transmission, filed their names and addresses with the Preferred Securities Guaranty Trustee for that purpose.

Section 2.4 Periodic Reports to Preferred Securities Guaranty Trustee

(a) General. The Guarantor shall furnish to the Preferred Securities Guaranty Trustee:

(i) unless the Guarantor is then filing comparable reports pursuant to the reporting requirements of the Exchange Act, as soon as practicable and in any event within 45 days after the end of the first, second and third quarterly accounting periods of each fiscal year (commencing with the quarter ending March 31, 2010), the Guarantor's unaudited consolidated balance sheet as of the last day of such quarterly period and the related consolidated statements of income and cash flows during such quarterly period prepared in accordance with GAAP and (in the case of second and third quarterly periods) for the portion of the fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year;

(ii) unless the Guarantor is then filing comparable reports pursuant to the reporting requirements of the Exchange Act, as soon as practicable and in any event within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2009), the Guarantor's consolidated balance sheet as of the end of such year and the related consolidated statements of income, cash flows, and shareholders' equity during such year setting forth in each case in comparative form corresponding figures from the preceding fiscal year accompanied by an audit report thereon of a firm of independent public accountants registered with the Public Company Accounting Oversight Board;

(iii) at the time of the delivery of the report provided for in clause (ii) above (or at the time of the filing of the comparable report pursuant to the Exchange Act), an Officers' Certificate in form attached hereto as Exhibit A to the effect that, to the best of such officers' knowledge, no default or Event of Default under the Guarantee Agreement has occurred and is continuing or, if any default or Event of Default thereunder has occurred and is continuing, specifying the nature and extent thereof and what action the Guarantor is taking or proposes to take in response thereto; and

(iv) promptly after the Guarantor obtains actual knowledge of the occurrence thereof, written notice of the occurrence of any event or condition which constitutes an Event of Default, and an Officers' Certificate of the Guarantor specifically stating that such Event of Default has occurred and setting forth the details thereof and the action which the Guarantor is taking or proposes to take with respect thereto.

(b) All such information provided to the Preferred Securities Guaranty Trustee as indicated above also will be provided by the Preferred Securities Guaranty Trustee upon written request to the Preferred Securities Guaranty Trustee (which may be a single continuing request), to (x) Holders, (y) holders of beneficial interests in the Preferred Securities or (z) prospective purchasers of the Preferred Securities (and of beneficial interests in the Preferred Securities). The Guarantor shall furnish to the Preferred Securities Guaranty Trustee, upon its request, sufficient copies of all such information to accommodate the requests of such Holders (and holders of beneficial interests therein) and prospective holders of Securities (and of beneficial interests therein)

(c) Upon the request of any Holder, any holder of a beneficial interest in the Preferred Securities, or the Preferred Securities Guaranty Trustee (on behalf of a Holder or a holder of a beneficial interest in the Preferred Securities), the Guarantor shall furnish such information as is specified in paragraph (d)(4) of Rule 144A to Holders (and to holders of beneficial interests in the Preferred Securities), prospective purchasers of the Preferred Securities (and of beneficial interests in the Preferred Securities) who are Qualified Institutional Buyers or Accredited Investors or to the Preferred Securities Guaranty Trustee for delivery to such Holder (or holders of beneficial interests in the Preferred Securities) or prospective purchasers of the Preferred Securities (or prospective purchasers of beneficial interests therein), as the case may be, unless, at the time of such request, the Guarantor is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Section 2.5 Evidence of Compliance with Conditions Precedent

(a) The Guarantor shall furnish to the Preferred Securities Guaranty Trustee evidence of compliance with the conditions precedent, if any, provided for in the Preferred Securities Guaranty (including any covenants compliance with which constitutes a condition precedent) which relate to the satisfaction and discharge of the Preferred Securities Guaranty, or to any other action to be taken by the Preferred Securities Guaranty Trustee at the request or upon the application of the Guarantor. Such evidence shall consist of the following:

- (i) Officers' Certificates or opinions made by officers of the Guarantor stating that such conditions precedent have been complied with; and
- (ii) An opinion of counsel (who may be counsel of the Guarantor) stating that in his opinion such conditions precedent have been complied with.

Section 2.6 Events of Default; Waiver

The Holders of a Majority in liquidation amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Preferred Securities Guaranty, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 2.7 Event of Default; Notice

(a) The Preferred Securities Guaranty Trustee shall, within 90 days after the occurrence of a default with respect to this Preferred Securities Guaranty known to a Responsible Officer of the Preferred Securities Guaranty Trustee, mail by first class postage prepaid, to all Holders of the Preferred Securities, notices of all defaults actually known to a Responsible Officer of the Preferred Securities Guaranty Trustee, unless such defaults have been cured before the giving of such notice, provided, that, except in the case of default in the payment of any Guaranty Payment, the Preferred Securities Guaranty Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Preferred Securities Guaranty Trustee in good faith determines that the withholding of such notice is in the interests of the holders of the Preferred Securities.

(b) The Preferred Securities Guaranty Trustee shall not be deemed to have knowledge of any Event of Default unless the Preferred Securities Guaranty Trustee shall have received written notice, or a Responsible Officer of the Preferred Securities Guaranty Trustee charged with the administration of the Trust Agreement shall have obtained actual knowledge, of such Event of Default.

Section 2.8 Conflicting Interests

The Trust Agreement shall be deemed to be specifically described in this Preferred Securities Guaranty for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

**ARTICLE III
POWERS, DUTIES AND RIGHTS OF
PREFERRED SECURITIES GUARANTY TRUSTEE**

Section 3.1 Powers and Duties of the Preferred Securities Guaranty Trustee

(a) This Preferred Securities Guaranty shall be held by the Preferred Securities Guaranty Trustee for the benefit of the Holders of the Preferred Securities, and the Preferred Securities Guaranty Trustee shall not transfer this Preferred Securities Guaranty to any Person except a Holder of Preferred Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Preferred Securities Guaranty Trustee on acceptance by such Successor Preferred Securities Guaranty Trustee of its appointment to act as Successor Preferred Securities Guaranty Trustee. The right, title and interest of the Preferred Securities Guaranty Trustee shall automatically vest in any Successor Preferred Securities Guaranty Trustee, and such vesting and succession of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Preferred Securities Guaranty Trustee.

(b) If an Event of Default actually known to a Responsible Officer of the Preferred Securities Guaranty Trustee has occurred and is continuing, the Preferred Securities Guaranty Trustee shall enforce this Preferred Securities Guaranty for the benefit of the Holders of the Preferred Securities.

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

(d) No provision of this Preferred Securities Guaranty shall be construed to relieve the Preferred Securities Guaranty Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that:

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

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

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

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

(iii) the Preferred Securities Guaranty Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a Majority in liquidation amount of the Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Preferred Securities Guaranty Trustee, or exercising any trust or power conferred upon the Preferred Securities Guaranty Trustee under this Preferred Securities Guaranty; and

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

Section 3.2 Certain Rights of Preferred Securities Guaranty Trustee

(a) Subject to the provisions of Section 3.1:

(i) The Preferred Securities Guaranty Trustee may conclusively rely, and shall be fully protected in acting or refraining from acting, upon any resolution, certificate, statement instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(ii) Any direction or act of the Guarantor contemplated by this Preferred Securities Guaranty may be sufficiently evidenced by an Officers' Certificate.

(iii) Whenever, in the administration of this Preferred Securities Guaranty, the Preferred Securities Guaranty Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Preferred Securities Guaranty Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor.

(iv) The Preferred Securities Guaranty Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or registration thereof).

(v) The Preferred Securities Guaranty Trustee may consult with counsel of its selection, and the advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Preferred Securities Guaranty Trustee shall have the right at any time to seek instructions concerning the administration of this Preferred Securities Guaranty from any court of competent jurisdiction.

(vi) The Preferred Securities Guaranty Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Preferred Securities Guaranty at the request or direction of any Holder, unless such Holder shall have provided to the Preferred Securities Guaranty Trustee such security and indemnity, satisfactory to the Preferred Securities Guaranty Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Preferred Securities Guaranty Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Preferred Securities Guaranty Trustee; provided that, nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Preferred Securities Guaranty Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Preferred Securities Guaranty.

(vii) The Preferred Securities Guaranty Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Preferred Securities Guaranty Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(viii) The Preferred Securities Guaranty Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians or attorneys, and the Preferred Securities Guaranty Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(ix) Any action taken by the Preferred Securities Guaranty Trustee or its agents hereunder shall bind the Holders of the Preferred Securities, and the signature of the Preferred Securities Guaranty Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Preferred Securities Guaranty Trustee to so act or as to its compliance with any of the terms and provisions of this Preferred Securities Guaranty, both of which shall be conclusively evidenced by the Preferred Securities Guaranty Trustee's or its agent's taking such action.

(x) Whenever in the administration of this Preferred Securities Guaranty the Preferred Securities Guaranty Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Preferred Securities Guaranty Trustee (i) may request and shall be entitled to receive, instructions from the Holders of a Majority in liquidation amount of the Preferred Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be fully protected in conclusively relying on or acting in accordance with such instructions.

(xi) The Preferred Securities Guaranty Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith, without gross negligence, and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Preferred Securities Guaranty.

(b) No provision of this Preferred Securities Guaranty shall be deemed to impose any duty or obligation on the Preferred Securities Guaranty Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Preferred Securities Guaranty Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Preferred Securities Guaranty Trustee shall be construed to be a duty.

Section 3.3. Not Responsible for Recitals or Issuance of Preferred Securities Guaranty

The recitals contained in this Preferred Securities Guaranty shall be taken as the statements of the Guarantor, and the Preferred Securities Guaranty Trustee does not assume any responsibility for their correctness. The Preferred Securities Guaranty Trustee makes no representation as to the validity or sufficiency of this Preferred Securities Guaranty.

**ARTICLE IV
PREFERRED SECURITIES GUARANTY TRUSTEE**

Section 4.1 Preferred Securities Guaranty Trustee: Eligibility

- (a) There shall at all times be a Preferred Securities Guaranty Trustee which shall:
 - (i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least U.S. \$50,000,000, and subject to supervision or examination by Federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Preferred Securities Guaranty Trustee shall cease to be eligible to so act under Section 4.1(a), the Preferred Securities Guaranty Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

(c) If the Preferred Securities Guaranty Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Preferred Securities Guaranty Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 4.2 Appointment, Removal and Resignation of Preferred Securities Guaranty Trustee

(a) Subject to Section 4.2(b), the Preferred Securities Guaranty Trustee may be appointed or removed without cause at any time by the Guarantor except during an Event of Default.

(b) The Preferred Securities Guaranty Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Preferred Securities Guaranty Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Preferred Securities Guaranty Trustee and delivered to the Guarantor.

(c) The Preferred Securities Guaranty Trustee shall hold office until a Successor Preferred Securities Guaranty Trustee shall have been appointed or until its removal or resignation. The Preferred Securities Guaranty Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Preferred Securities Guaranty Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Preferred Securities Guaranty Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Preferred Securities Guaranty Trustee and delivered to the Guarantor and the resigning Preferred Securities Guaranty Trustee.

(d) If no Successor Preferred Securities Guaranty Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery of an instrument of removal or resignation, the Preferred Securities Guaranty Trustee resigning or being removed may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Preferred Securities Guaranty Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Preferred Securities Guaranty Trustee.

(e) No Preferred Securities Guaranty Trustee shall be liable for the acts or omissions to act of any Successor Preferred Securities Guaranty Trustee.

(f) Upon termination of this Preferred Securities Guaranty or removal or resignation of the Preferred Securities Guaranty Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Preferred Securities Guaranty Trustee all amounts due to the Preferred Securities Guaranty Trustee accrued to the date of such termination, removal or resignation.

ARTICLE V GUARANTY

Section 5.1 Guaranty

The Guarantor irrevocably and unconditionally agrees to pay in full on a subordinated basis to the extent set forth in this Preferred Securities Guaranty to the Holders the Guaranty Payments (without duplication of amounts theretofore paid by the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guaranty Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders. The Guarantors shall notify the Preferred Securities Guaranty Trustee of any such payment in writing.

Section 5.2 Waiver of Notice and Demand

The Guarantor hereby waives notice of acceptance of this Preferred Securities Guaranty and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3 Obligations Not Affected

The obligations, covenants, agreements and duties of the Guarantor under this Preferred Securities Guaranty shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;
- (b) the extension of time for the payment by the Issuer of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Debentures permitted by the Indenture);
- (c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

- (d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;
- (e) any invalidity of, or defect or deficiency in, the Preferred Securities;
- (f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or
- (g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor with respect to the Guaranty Payments shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

Section 5.4 Rights of Holders

(a) The Holders of a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Preferred Securities Guaranty Trustee in respect of this Preferred Securities Guaranty or exercising any trust or power conferred upon the Preferred Securities Guaranty Trustee under this Preferred Securities Guaranty.

(b) If the Preferred Securities Guaranty Trustee fails to enforce such Preferred Securities Guaranty, any Holder of Preferred Securities may institute a legal proceeding directly against the Guarantor to enforce the Preferred Securities Guaranty Trustee's rights under this Preferred Securities Guaranty, without first instituting a legal proceeding against the Issuer, the Preferred Securities Guaranty Trustee or any other person or entity. The Guarantor waives any right or remedy to require that any action be brought first against the Issuer or any other person or entity before proceeding directly against the Guarantor.

Section 5.5 Guaranty of Payment

This Preferred Securities Guaranty creates a guarantee of payment and not of collection.

Section 5.6 Subrogation

The Guarantor shall be subrogated to all (if any) rights of the Holders of Preferred Securities against the Issuer in respect of any amounts paid to such Holders by the Guarantor under this Preferred Securities Guaranty; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Preferred Securities Guaranty, if, at the time of any such payment, any amounts are due and unpaid under this Preferred Securities Guaranty. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guaranty Payments pursuant to the terms of this Preferred Securities Guaranty notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

**ARTICLE VI
LIMITATION OF TRANSACTIONS; SUBORDINATION**

So long as any Preferred Securities remain outstanding and (i) there shall have occurred any event of which the Guarantor has actual knowledge that (a) is, or with the giving of notice or the lapse of time, or both, would be an Event of Default and (b) in respect of which the Guarantor shall not have taken reasonable steps to cure, (ii) if such Debentures are held by the Property Trustee, the Guarantor shall be in default with respect to its payment of any obligations under this Preferred Securities Guaranty or (iii) the Guarantor shall have given notice of its election of the exercise of its right to extend the interest payment period pursuant to Section 16.01 of the Indenture and any such extension shall be continuing, the Guarantor shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of the Guarantor's capital stock (which includes common and preferred stock) or (ii) make any payment of principal, interest or premium, if any, on, or repay or repurchase or redeem any debt securities of the Guarantor (including any Other Debentures) that rank *pari passu* with or junior in right of payment to the Debentures or (iii) make any guarantee payments with respect to any guarantee by the Guarantor of the debt securities of any subsidiary of the Guarantor (including Other Guarantees) if such guarantee ranks *pari passu* or junior in right of payment to the Debentures (other than (a) dividends or distributions in shares of, or options, warrants, rights to subscribe for or purchase shares of, common stock of the Guarantor, (b) any declaration of a dividend in connection with the implementation of a stockholder's 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, (c) payments under the Preferred Securities Guaranty, (d) as a result of a reclassification of the Guarantor's capital stock or the exchange or the conversion of one class or series of the Guarantor's capital stock for another class or series of the Guarantor's capital stock, (e) the purchase of fractional interests in shares of the Guarantor's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, and (f) purchases or issuances of common stock in connection with any of the Guarantor's stock option, stock purchase, stock loan or other benefit plans for its directors, officers or employees or any of the Guarantor's dividend reinvestment plans, in each case as now existing or hereafter established or amended). Notwithstanding anything herein to the contrary, in no event shall this provision be deemed to limit the Guarantor from issuing shares of its common stock to any Person whether in a public or private transaction.

Section 6.2 Ranking

This Preferred Securities Guaranty will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to Senior Debt (as defined in the Indenture), to the same extent and in the same manner that the Debentures are subordinated to Senior Debt pursuant to the Indenture (except as indicated below), it being understood that the terms of Article XV of the Indenture shall apply to the obligations of the Guarantor under this Preferred Securities Guaranty as if (x) such Article XV were set forth herein in full and (y) such obligations were substituted for the term "Securities" appearing in such Article XV, except that with respect to Section 15.03 of the Indenture only, the term "Senior Debt" shall mean all liabilities of the Guarantor, whether or not for money borrowed (other than obligations in respect of Other Guarantees), (ii) *pari passu* with any Other Guarantee (as defined herein) and (iii) senior to any obligations in respect of any class of the Guarantor's capital stock.

**ARTICLE VII
TERMINATION**

Section 7.1 Termination

This Preferred Securities Guaranty shall terminate and be of no further force and effect (i) upon full payment of the Redemption Price (as defined in the Trust Agreement) of all Preferred Securities, or (ii) upon liquidation of the Issuer, the full payment of the amounts payable in accordance with the Trust Agreement or the distribution of the Debentures to the Holders of all of the Preferred Securities. Notwithstanding the foregoing, this Preferred Securities Guaranty will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Preferred Securities must restore payment of any sums paid under the Preferred Securities or under this Preferred Securities Guaranty.

**ARTICLE VIII
INDEMNIFICATION**

Section 8.1 Exculpation

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Preferred Securities Guaranty and in a manner that such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Preferred Securities Guaranty or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Preferred Securities might properly be paid.

Section 8.2 Indemnification

The Guarantor agrees to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any and all loss, liability, damage, claim or expense incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 8.2 shall survive the termination of this Preferred Securities Guaranty.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1 Successors and Assigns

All guarantees and agreements contained in this Preferred Securities Guaranty shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding.

Section 9.2 Amendments

Except with respect to any changes that do not materially adversely affect the rights of Holders (in which case no consent of Holders will be required), this Preferred Securities Guaranty may only be amended with the prior approval of the Holders of a Majority in liquidation amount of the Securities (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined). The provisions of Section 12.2 of the Trust Agreement with respect to meetings of Holders of the Securities apply to the giving of such approval.

All notices provided for in this Preferred Securities Guaranty shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) If given to the Issuer, in care of the Administrative Trustee at the Issuer's mailing address set forth below (or such other address as the Issuer may give notice of to the Holders of the Common Securities):

ServisFirst Capital Trust II
c/o ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209
Attention: Thomas A. Broughton III

Facsimile: (205) 949-0303

(b) If given to the Preferred Securities Guaranty Trustee, at the Preferred Securities Guaranty Trustee's mailing address set forth below (or such other address as the Preferred Securities Guaranty Trustee may give notice of to the Holders of the Preferred Securities):

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Attention: Corporate Trust Administration

Facsimile: (302) 636-4145

(c) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Holders of the Preferred Securities):

ServisFirst Bancshares, Inc.
850 Shades Creek Parkway, Suite 200
Birmingham, Alabama 35209
Attention: Thomas A. Broughton III
Facsimile: (205) 949-0303

(d) If given to any Holder of Preferred Securities, at the address set forth on the books and records of the Issuer.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

Section 9.4 Benefit

This Preferred Securities Guaranty is solely for the benefit of the Holders of the Preferred Securities and, is not separately transferable from the Preferred Securities.

Section 9.5 Governing Law

THIS PREFERRED SECURITIES GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

[Signatures on Following Page]

THIS Preferred Securities Guaranty is executed as of the day and year first above written.

SERVISFIRST BANCSHARES, INC., as
Guarantor

By: _____ /s/Thomas A. Broughton III
Thomas A. Broughton III
President and Chief Executive Officer

WILMINGTON TRUST COMPANY,
as Preferred Securities Guaranty Trustee

By: _____ /s/Christopher J. Slaybaugh
Authorized Officer

EXHIBIT A

CERTIFICATE TO TRUSTEE

Pursuant to Section 2.4(a)(iii) of the Preferred Securities Guaranty between ServisFirst Bancshares, Inc., as the Company (the "Company"), and Wilmington Trust Company, as Trustee, dated as of March 15, 2010 (the "Preferred Securities Guaranty"), the undersigned hereby certifies as follows:

1. In my capacity as an officer of the Company, I would normally have knowledge of any default by the Company during the last fiscal year in the performance of any covenants of the Company contained in the Indenture.
2. [To my knowledge, the Company is not default in the performance of any covenants contained in the Indenture.

or, alternatively:

I am aware of the default(s) in the performance of covenants in the Indentures, as specified below.] **PLEASE PICK THE SENTENCE THAT APPLIES and DELETE THE ONE THAT DOES NOT.**

Capitalized terms used herein, and not otherwise defined herein, have the respective meanings ascribed to thereto in the Indenture.

IN WITNESS WHEREOF, the undersigned has executed this Officers' Certificate.

Date: _____, 20__

Name:
Title:

Name:
Title:



FOR IMMEDIATE RELEASE
March 18, 2010

FOR INFORMATION CONTACT:
Bud Foshee (205) 949-0307

SERVISFIRST BANCSHARES, INC.
COMPLETES THE SALE OF \$15,000,000
MANDATORY CONVERTIBLE TRUST PREFERRED SECURITIES

Birmingham, AL – ServisFirst Bancshares, Inc. announced today that it had completed the sale of \$15,000,000 in Mandatory Convertible Trust Preferred Securities, including the full exercise of a \$3,000,000 over-allotment option. These securities were sold in a private placement primarily to existing shareholders.

“This capital will be used to support our plans for continued profitable growth in our four regions of Alabama,” said Tom Broughton, President and CEO. “We are gratified that the offering was oversubscribed by 100 percent in one month, thanks to our great base of shareholders.”

ABOUT SERVISFIRST:

ServisFirst Bancshares, Inc. is a bank holding company based in Birmingham, Alabama. Through its subsidiary ServisFirst Bank, ServisFirst provides business and personal financial services through locations in Birmingham, Huntsville, Montgomery and Dothan, Alabama.

ServisFirst files periodic reports with the U.S. Securities and Exchange Commission (SEC). Copies of its filings may be obtained through the SEC’s website www.sec.gov or at www.servisfirstbancshares.com.

ServisFirst Bank is a full service bank focused on commercial banking, cash management, private banking and the professional consumer market, emphasizing competitive products, state-of-the-art technology and a focus on quality service. Recently the bank announced its benchmark of success of accumulating over \$1.6 billion in assets with no brokered deposits. The bank offers sophisticated cash management products, Internet banking, home mortgage lending, remote deposit express service and highly competitive rates.

ServisFirst Bank was formed in Birmingham in May 2005 and opened ServisFirst Bank Huntsville in August 2006, ServisFirst Bank Montgomery in June 2007 and ServisFirst Bank Dothan in September 2008. More information about ServisFirst Bank may be obtained at www.servisfirstbank.com.

Statements in this press release that are not historical facts, including, but not limited to, statements concerning future operations, results or performance, are hereby identified as "forward-looking statements" for the purpose of the safe harbor provided by Section 21E of the Securities Exchange Act of 1934 and Section 27A of the Securities Act of 1933. The words "believe," "expect," "anticipate," "project," "plan," "intend," "will," "would," "might" and similar expressions often signify forward-looking statements. Such statements involve inherent risks and uncertainties. ServisFirst Bancshares, Inc. cautions that such forward-looking statements, wherever they occur in this press release or in other statements attributable to ServisFirst Bancshares, Inc. are necessarily estimates reflecting the judgment of ServisFirst Bancshares, Inc.'s senior management and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. Such forward-looking statements should, therefore, be considered in light of various factors that could affect the accuracy of such forward-looking statements including: general economic conditions, especially in the credit markets and in the Southeast; the performance of the capital markets; changes in interest rates, yield curves and interest rate spread relationships; changes in accounting and tax principles, policies or guidelines; changes in legislation or regulatory requirements; changes in our loan portfolio and the deposit base; possible changes in laws and regulations and governmental monetary and fiscal policies, including, but not limited to, economic stimulus initiatives and so-called "bailout" initiatives; the cost and other effects of legal and administrative cases and similar contingencies; possible changes in the creditworthiness of customers and the possible impairment of the collectability of loans and the value of collateral; the effect of natural disasters, such as hurricanes, in our geographic markets; and increased competition from both banks and non-bank financial institutions. The foregoing list of factors is not exhaustive. For discussion of these and other risks that may cause actual results to differ from expectations, please refer to "Risk Factors" in our most recent Annual Report on Form 10-K and our other SEC filings. If one or more of the factors affecting our forward-looking information and statements proves incorrect, then our actual results, performance or achievements could differ materially from those expressed in, or implied by, forward-looking information and statements contained herein. Accordingly, you should not place undue reliance on any forward-looking statements, which speak only as of the date made. ServisFirst Bancshares, Inc. assumes no obligation to update or revise any forward-looking statements that are made from time to time.

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FOR IMMEDIATE RELEASE
March 18, 2010

FOR INFORMATION CONTACT:
Bud Foshee (205) 949-0307
Andy Kattos (256) 722-7801

SERVISFIRST BANCSHARES, INC.
COMPLETES THE SALE OF \$15,000,000
MANDATORY CONVERTIBLE TRUST PREFERRED SECURITIES

Huntsville, AL – ServisFirst Bancshares, Inc. announced today that it had completed the sale of \$15,000,000 in Mandatory Convertible Trust Preferred Securities, including the full exercise of a \$3,000,000 over-allotment option. These securities were sold in a private placement primarily to existing shareholders.

“We are very pleased that the offering was oversubscribed by 100 percent in one month, thanks to our outstanding shareholders,” said Andy Kattos, Huntsville President and CEO of ServisFirst Bank. “The confidence our investors have demonstrated is truly gratifying.”

ABOUT SERVISFIRST:

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ServisFirst Bank was formed in Birmingham in May 2005 and opened ServisFirst Bank Huntsville in August 2006, ServisFirst Bank Montgomery in June 2007 and ServisFirst Bank Dothan in September 2008. More information about ServisFirst Bank may be obtained at www.servisfirstbank.com.

Statements in this press release that are not historical facts, including, but not limited to, statements concerning future operations, results or performance, are hereby identified as "forward-looking statements" for the purpose of the safe harbor provided by Section 21E of the Securities Exchange Act of 1934 and Section 27A of the Securities Act of 1933. The words "believe," "expect," "anticipate," "project," "plan," "intend," "will," "would," "might" and similar expressions often signify forward-looking statements. Such statements involve inherent risks and uncertainties. ServisFirst Bancshares, Inc. cautions that such forward-looking statements, wherever they occur in this press release or in other statements attributable to ServisFirst Bancshares, Inc. are necessarily estimates reflecting the judgment of ServisFirst Bancshares, Inc.'s senior management and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. Such forward-looking statements should, therefore, be considered in light of various factors that could affect the accuracy of such forward-looking statements including: general economic conditions, especially in the credit markets and in the Southeast; the performance of the capital markets; changes in interest rates, yield curves and interest rate spread relationships; changes in accounting and tax principles, policies or guidelines; changes in legislation or regulatory requirements; changes in our loan portfolio and the deposit base; possible changes in laws and regulations and governmental monetary and fiscal policies, including, but not limited to, economic stimulus initiatives and so-called "bailout" initiatives; the cost and other effects of legal and administrative cases and similar contingencies; possible changes in the creditworthiness of customers and the possible impairment of the collectability of loans and the value of collateral; the effect of natural disasters, such as hurricanes, in our geographic markets; and increased competition from both banks and non-bank financial institutions. The foregoing list of factors is not exhaustive. For discussion of these and other risks that may cause actual results to differ from expectations, please refer to "Risk Factors" in our most recent Annual Report on Form 10-K and our other SEC filings. If one or more of the factors affecting our forward-looking information and statements proves incorrect, then our actual results, performance or achievements could differ materially from those expressed in, or implied by, forward-looking information and statements contained herein. Accordingly, you should not place undue reliance on any forward-looking statements, which speak only as of the date made. ServisFirst Bancshares, Inc. assumes no obligation to update or revise any forward-looking statements that are made from time to time.

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FOR IMMEDIATE RELEASE
March 18, 2010

FOR INFORMATION CONTACT:
Bud Foshee (205) 949-0307
Carl Barker (334) 652-1294

SERVISFIRST BANCSHARES, INC.
COMPLETES THE SALE OF \$15,000,000
MANDATORY CONVERTIBLE TRUST PREFERRED SECURITIES

Montgomery, AL – ServisFirst Bancshares, Inc. announced today that it had completed the sale of \$15,000,000 in Mandatory Convertible Trust Preferred Securities, including the full exercise of a \$3,000,000 over-allotment option. These securities were sold in a private placement primarily to existing shareholders.

“ServisFirst Bank is so pleased that the offering was oversubscribed by 100 percent in just one month, thanks to our great base of shareholders,” said Carl Barker, Montgomery President and CEO of ServisFirst Bank. “This capital will be used to support our plans for continued profitable growth for the bank and for the benefit of our customers.”

ABOUT SERVISFIRST:

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ServisFirst Bank was formed in Birmingham in May 2005 and opened ServisFirst Bank Huntsville in August 2006, ServisFirst Bank Montgomery in June 2007 and ServisFirst Bank Dothan in September 2008. More information about ServisFirst Bank may be obtained at www.servisfirstbank.com.

Statements in this press release that are not historical facts, including, but not limited to, statements concerning future operations, results or performance, are hereby identified as "forward-looking statements" for the purpose of the safe harbor provided by Section 21E of the Securities Exchange Act of 1934 and Section 27A of the Securities Act of 1933. The words "believe," "expect," "anticipate," "project," "plan," "intend," "will," "would," "might" and similar expressions often signify forward-looking statements. Such statements involve inherent risks and uncertainties. ServisFirst Bancshares, Inc. cautions that such forward-looking statements, wherever they occur in this press release or in other statements attributable to ServisFirst Bancshares, Inc. are necessarily estimates reflecting the judgment of ServisFirst Bancshares, Inc.'s senior management and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. Such forward-looking statements should, therefore, be considered in light of various factors that could affect the accuracy of such forward-looking statements including: general economic conditions, especially in the credit markets and in the Southeast; the performance of the capital markets; changes in interest rates, yield curves and interest rate spread relationships; changes in accounting and tax principles, policies or guidelines; changes in legislation or regulatory requirements; changes in our loan portfolio and the deposit base; possible changes in laws and regulations and governmental monetary and fiscal policies, including, but not limited to, economic stimulus initiatives and so-called "bailout" initiatives; the cost and other effects of legal and administrative cases and similar contingencies; possible changes in the creditworthiness of customers and the possible impairment of the collectability of loans and the value of collateral; the effect of natural disasters, such as hurricanes, in our geographic markets; and increased competition from both banks and non-bank financial institutions. The foregoing list of factors is not exhaustive. For discussion of these and other risks that may cause actual results to differ from expectations, please refer to "Risk Factors" in our most recent Annual Report on Form 10-K and our other SEC filings. If one or more of the factors affecting our forward-looking information and statements proves incorrect, then our actual results, performance or achievements could differ materially from those expressed in, or implied by, forward-looking information and statements contained herein. Accordingly, you should not place undue reliance on any forward-looking statements, which speak only as of the date made. ServisFirst Bancshares, Inc. assumes no obligation to update or revise any forward-looking statements that are made from time to time.

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FOR IMMEDIATE RELEASE
March 18, 2010

FOR INFORMATION CONTACT:
Bud Foshee (205) 949-0307
Ronald DeVane (334) 618-0049

SERVISFIRST BANCSHARES, INC.
COMPLETES THE SALE OF \$15,000,000
MANDATORY CONVERTIBLE TRUST PREFERRED SECURITIES

Dothan, AL – ServisFirst Bancshares, Inc. announced today that it had completed the sale of \$15,000,000 in Mandatory Convertible Trust Preferred Securities, including the full exercise of a \$3,000,000 over-allotment option. These securities were sold in a private placement primarily to existing shareholders.

“We plan to use this capital to support our plans for continued profitable growth,” said Ronald DeVane, Dothan President and CEO of ServisFirst Bank. “We are very pleased that the offering was oversubscribed by 100 percent in one month, thanks to our great group of shareholders.”

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Statements in this press release that are not historical facts, including, but not limited to, statements concerning future operations, results or performance, are hereby identified as "forward-looking statements" for the purpose of the safe harbor provided by Section 21E of the Securities Exchange Act of 1934 and Section 27A of the Securities Act of 1933. The words "believe," "expect," "anticipate," "project," "plan," "intend," "will," "would," "might" and similar expressions often signify forward-looking statements. Such statements involve inherent risks and uncertainties. ServisFirst Bancshares, Inc. cautions that such forward-looking statements, wherever they occur in this press release or in other statements attributable to ServisFirst Bancshares, Inc. are necessarily estimates reflecting the judgment of ServisFirst Bancshares, Inc.'s senior management and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. Such forward-looking statements should, therefore, be considered in light of various factors that could affect the accuracy of such forward-looking statements including: general economic conditions, especially in the credit markets and in the Southeast; the performance of the capital markets; changes in interest rates, yield curves and interest rate spread relationships; changes in accounting and tax principles, policies or guidelines; changes in legislation or regulatory requirements; changes in our loan portfolio and the deposit base; possible changes in laws and regulations and governmental monetary and fiscal policies, including, but not limited to, economic stimulus initiatives and so-called "bailout" initiatives; the cost and other effects of legal and administrative cases and similar contingencies; possible changes in the creditworthiness of customers and the possible impairment of the collectability of loans and the value of collateral; the effect of natural disasters, such as hurricanes, in our geographic markets; and increased competition from both banks and non-bank financial institutions. The foregoing list of factors is not exhaustive. For discussion of these and other risks that may cause actual results to differ from expectations, please refer to "Risk Factors" in our most recent Annual Report on Form 10-K and our other SEC filings. If one or more of the factors affecting our forward-looking information and statements proves incorrect, then our actual results, performance or achievements could differ materially from those expressed in, or implied by, forward-looking information and statements contained herein. Accordingly, you should not place undue reliance on any forward-looking statements, which speak only as of the date made. ServisFirst Bancshares, Inc. assumes no obligation to update or revise any forward-looking statements that are made from time to time.

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