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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

FIRST MERCHANTS CORPORATION
(Exact Name of Registrant as
Specified in its Charter)

FIRST MERCHANTS CAPITAL TRUST I
FIRST MERCHANTS CAPITAL TRUST II
FIRST MERCHANTS CAPITAL TRUST III
(Exact Name of Registrant as
Specified in its Trust Agreement)

Indiana
(State or Other Jurisdiction of
Incorporation or Organization)

Delaware
(State or Other Jurisdiction of Incorporation
or Organization of Each Registrant)

35-1544218
(I.R.S. Employer Identification No.)

51-6523248
51-6523249
51-6523250
(I.R.S. Employer Identification No.'s,
respectively)

200 East Jackson Street, Muncie, Indiana 47305 (765) 747-1500
(Address, including Zip Code, and Telephone Number, including Area Code, of
Registrants' and co-Registrants' Principal Executive
Offices)

Michael L. Cox
President
200 East Jackson Street
Muncie, Indiana 47305
(765) 747-1500
(Name, Address, including Zip Code, and Telephone Number, including Area Code,
of Agent for Service)

Copies to:
David R. Prechtel
Bingham, Summers, Welsh & Spilman, LLP
10 West Market Street
2700 Market Tower
Indianapolis, Indiana 46204
(317) 635-8900

Approximate date of commencement of proposed sale of the securities to the
public: From time to time after the effective date of this Registration
Statement, as determined in light of market conditions and other factors.

If the only securities being registered on this Form are being offered
pursuant to dividend or interest reinvestment plans, please check the following
box.

If any of the securities being registered on this Form are to be offered on
a delayed or continuous basis pursuant to Rule 415 under the Securities Act of
1933, other than securities offered only in connection with dividend or interest
reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering
pursuant to Rule 462(b) under the Securities Act, please check the following box
and list the Securities Act registration statement number of the earlier
registration statement for the same offering. _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c)
under the Securities Act, check the following box and list the Securities Act
registration statement number of the earlier effective registration statement
for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434
under the Securities Act, please check the following box.

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (2)
Trust Preferred Securities of:		
First Merchants Capital Trust I.....	(3)	--
First Merchants Capital Trust II.....	(3)	--
First Merchants Capital Trust III.....	(3)	--
Junior Subordinated Debentures of First Merchants Corporation	(3)	--
Guarantees by First Merchants Corporation of Trust Preferred Securities (4).....	--	--
Total (5).....	\$70,000,000	\$18,750

- (1) The proposed maximum offering price per unit will be determined from time to time by the registrants in connection with the issuance by the registrants of the securities registered hereunder.
- (2) The proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933.
- (3) Subject to note 5 below, there is being registered hereunder an indeterminate amount and number of trust preferred securities of First Merchants Capital Trust I and First Merchants Capital Trust II and First Merchants Capital Trust III (collectively, the "Trusts") and an indeterminate principal amount of junior subordinated debentures of First Merchants Corporation. A like amount of junior subordinated debentures may be issued and sold by First Merchants Corporation to any of the Trusts, in which event such junior subordinated debentures may later be distributed for no additional consideration to the holders of the trust preferred securities of such Trust upon a dissolution of such Trust and the distribution of the assets thereof.
- (4) First Merchants Corporation will not receive separate consideration for the guarantee of the trust preferred securities. The guarantee includes the rights of holders of trust preferred securities under the guarantee and certain back-up undertakings, as described in this Registration Statement.
- (5) In no event will the aggregate offering price of all securities issued from time to time pursuant to this Registration Statement exceed \$70,000,000.

The registrants hereby amend this registration statement on such date or dates as may be necessary to delay its effective date until the registrants shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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

Subject to Completion, Dated December 21, 2001

Prospectus

\$70,000,000

First Merchants Capital Trust I
First Merchants Capital Trust II
First Merchants Capital Trust III
Trust Preferred Securities

Guaranteed by

[FIRST MERCHANTS LOGO APPEARS HERE]

The Trusts:

The trusts are Delaware business trusts and wholly owned subsidiaries of First Merchants Corporation. Each trust may in one or more offerings:

- o offer and sell preferred securities representing undivided beneficial interests in the assets of the trust to the public;
- o offer and sell common securities representing undivided beneficial interests in the assets of the trusts to First Merchants Corporation;
- o use the proceeds from these sales to buy an equal principal amount of debentures of First Merchants Corporation; and
- o distribute the cash payments it receives on the debentures it owns to the holders of each trust's preferred and common securities.

Distributions:

- o For each preferred security that you own, you will receive cumulative cash distributions at a rate set forth in the applicable prospectus supplement on the liquidation amount of the preferred security. The liquidation amount per preferred security will be set forth in the applicable prospectus supplement.

Limited Guarantee:

- o First Merchants Corporation will provide a limited guarantee of the payment by the trusts of distributions on the preferred securities and upon liquidation and redemption.

The aggregate initial offering price of the preferred securities that the trusts offer by this prospectus will not exceed \$70,000,000. The trusts will offer the preferred securities in amounts, at prices and on terms to be determined by market conditions at the time of the offerings. We will provide specific terms of the preferred securities in supplements to this prospectus. You should read this prospectus and any supplements carefully before you invest.

The preferred securities are not deposits or other obligations of a bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Prospectus dated _____, 2002

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ABOUT THIS PROSPECTUS

This prospectus may not be used to sell securities unless it is accompanied by a prospectus supplement.

This prospectus is part of a registration statement that we, First Merchants Capital Trust I, First Merchants Capital Trust II and First Merchants Capital Trust III, filed with the Securities and Exchange Commission utilizing a "shelf" registration process. Under this shelf process, we may from time to time issue guarantees and debentures to the trusts as described in this prospectus and the trusts may sell the trust preferred securities described in this prospectus in one or more offerings up to a total dollar amount of \$70,000,000. This prospectus provides you with a general description of the securities that we and the trusts may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. If there is any inconsistency between the information in this prospectus and any prospectus supplement, you should rely on the information in the prospectus supplement. The registration statement filed with the SEC includes exhibits that provide more details about the matters discussed in this prospectus. You should read this prospectus, the related exhibits filed with the SEC and any prospectus supplement, together with the additional information described below under the headings "Where You Can Get More Information" and "Documents Incorporated by Reference."

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We make certain forward-looking statements in this prospectus and any prospectus supplement that are based upon current expectations and projections about current events. We intend these forward-looking statements to be covered by the safe harbor provisions for forward looking statements contained in the Private Securities Litigation Reform Act of 1995, and we are including this statement for purposes of these safe harbor provisions. You can identify these statements from our use of the words "estimate," "project," "believe," "intend," "should," "focus," "anticipate," "expect" and similar expressions. The forward-looking statements include:

- o statements of our goals, intentions and expectations;
- o statements regarding our business plans and growth strategies;
- o statements regarding the asset quality of our loan and investment portfolios; and
- o estimates of our risks and future costs and benefits.

These forward-looking statements are subject to significant risks, assumptions and uncertainties, including, among other things, the following important factors which could affect the actual outcome of future events:

- o fluctuations in market rates of interest and loan and deposit pricing, which could negatively affect our net interest margin, asset valuations and expense expectations;
- o adverse changes in the economy of the northeastern and north-central Indiana area, which might affect our business prospects and could cause credit-related losses and expenses;
- o adverse developments in our loan and investment portfolios;

- o competitive factors in the banking industry, such as the trend towards consolidation in our market; and
- o changes in banking legislation or the regulatory requirements of federal and state agencies applicable to bank holding companies and banks like ours.

Because of these and other uncertainties, our actual future results may be materially different from the results indicated by these forward-looking statements. In addition, our past results of operations do not necessarily indicate our future results.

FIRST MERCHANTS CORPORATION

First Merchants Corporation, headquartered in Muncie, Indiana, is a multi-bank holding company organized in 1982 under the laws of the State of Indiana. First Merchants Corporation is also a financial holding company.

First Merchants Corporation was originally formed as the bank holding company for First Merchants Bank, National Association. Since that time, First Merchants Corporation has acquired Pendleton Banking Company, First United Bank, The Union County National Bank of Liberty, The Randolph County Bank, The First National Bank of Portland, Anderson Community Bank, Decatur Bank & Trust Company and Frances Slocum Bank & Trust Company. Each of such banks operates as a wholly-owned subsidiary of First Merchants Corporation with the exception of Pendleton Banking Company and Anderson Community Bank which were merged and operate under the name "The Madison Community Bank."

First Merchants Corporation provides commercial and retail banking services in Delaware, Adams, Madison, Henry, Union, Wayne, Fayette, Randolph, Jay, Wabash, Miami, Hamilton and Howard counties in the State of Indiana, through the 54 offices of its 8 bank subsidiaries. These banks provide a wide range of retail and commercial banking services, including:

- o demand, savings and time deposits;
- o agricultural, commercial, industrial, consumer and real estate loans;
- o installment credit lending;
- o safe deposit facilities;
- o collections;
- o fiduciary and trust services; and
- o other general services related to the banking business.

First Merchants Corporation's bank subsidiaries make and service both secured and unsecured loans to individuals, firms and corporations. Their installment loan departments make direct loans to individuals and purchase installment obligations from retailers without recourse.

Through various nonbank subsidiaries, First Merchants Corporation also engages in the general insurance business, the title insurance agency business and the reinsurance of credit life, accident and health insurance.

First Merchants Corporation anticipates that it will continue its policy of geographic expansion of its banking business through the acquisition of banks whose operations are consistent with its community banking philosophy. Management routinely explores opportunities to acquire financial institutions and other financial services-related businesses and to enter into strategic alliances to expand the scope of its services and its customer base. On October 15, 2001, First Merchants Corporation and Lafayette Bancorporation jointly announced the signing of a definitive agreement pursuant to which Lafayette Bancorporation will be merged with and into First Merchants Corporation. As a result of the merger, Lafayette Bank and Trust Company will become a wholly-owned subsidiary of First Merchants Corporation. Subject to various contingencies, the merger is expected to be completed in the second quarter of 2002.

First Merchant Corporation's principal office is located at 200 East Jackson Street, Muncie, Indiana 47305. Its telephone number is (765) 747-1500.

DESCRIPTION OF THE TRUSTS

Each trust is a statutory business trust formed pursuant to the Delaware Business Trust Act under trust agreements executed by us, as sponsor for the trusts, and the trustees, and certificates of trust have been filed with the Delaware Secretary of State. Each trust agreement will be amended and restated in its entirety in substantially the form filed as an exhibit to the registration statement of which this prospectus is a part, as of the date each of the preferred securities are initially issued. Each of the trust agreements will be qualified under the Trust Indenture Act of 1939.

The following discussion contains a description of the material terms of the trust agreements for the trusts and is subject to, and is qualified in its entirety by reference to, the amended and restated trust agreements.

The holders of the preferred securities issued by a trust will own all of the issued and outstanding preferred securities of such trust which will have certain prior rights over the other securities of such trust. We will not initially own any of the preferred securities issued by any trust. We will acquire the common securities of each of the trusts in an amount equal to at least 3% of the total capital of each of the trusts and will initially own, directly or indirectly, all of the issued and outstanding common securities of each of the trusts. The common securities that may be issued by a trust, together with the preferred securities of such trust, are called the trust securities.

Each trust exists for the exclusive purposes of:

- o issuing and selling its preferred securities to the public for cash;
- o issuing and selling its common securities to us in exchange for our capital contribution to such trust;
- o investing the proceeds from the sale of its trust securities in an equivalent amount of debentures issued by us; and

- o engaging in other activities that are incidental to those listed above, such as receiving payments on the debentures it purchases from us and making distributions to holders of its trust securities, furnishing notices and other administrative tasks.

None of the trusts will have any independent business operations or any assets, revenues or cash flows other than those related to the issuance and administration of the trust securities.

The rights of the holders of each trust's preferred securities will be set forth in the amended and restated trust agreement relating to such trust, the Delaware Business Trust Act and the Trust Indenture Act. None of the trusts, under their respective trust agreements, may borrow money or make any investment other than in the debentures to be issued by us. Other than with respect to payment of distributions on and the liquidation amount of the trust securities, First Merchants Corporation has agreed to pay for all debts and obligations and all costs and expenses of each of the trusts, including the fees and expenses of the trustees and any income taxes, duties and other governmental charges, and all costs and expenses related to these charges, to which each of the trusts may become subject, except for United States withholding taxes that are properly withheld.

Unless otherwise specified in the applicable prospectus supplement, each of the trusts will initially have five trustees. Three of the trustees for each trust will be persons who are employees or officers of, or who are affiliated with, First Merchants Corporation. They are administrative trustees. The fourth trustee for each trust will be an entity that maintains its principal place of business in the State of Delaware. It is the Delaware trustee. Initially, First Union Trust Company, National Association, will act as Delaware trustee for each of the trusts. The fifth trustee for each trust, called the property trustee, will also be First Union Trust Company, National Association initially. The property trustee is the institutional trustee under each of the trust agreements and acts as the indenture trustee called for under the applicable provisions of the Trust Indenture Act. Also for purposes of compliance with the Trust Indenture Act, First Union Trust Company, National Association will initially act as guarantee trustee and indenture trustee under each the of the guarantees and the indentures.

We, as holder of all of the common securities of each of the trusts, will have the right to appoint or remove any trustee unless an event of default under the indenture has occurred and is continuing, in which case only the holders of the preferred securities of the indenture so affected may remove the Delaware trustee or the property trustee. Each of the trusts has a term of approximately 31 years but may terminate earlier as provided in the respective trust agreement.

The property trustee will hold the debentures for the benefit of the holders of each trust's trust securities and will have the power to exercise all rights, powers and privileges under the indenture as the holder of the debentures. In addition, unless a separate paying agent is appointed by First Merchants Corporation, the property trustee will maintain exclusive control of a segregated noninterest-bearing "payment account" to hold all payments made on the distributions for the benefit of the holders of each trust's trust securities. The property trustee will make payments of distributions and payments on liquidation, redemption and otherwise to the holders of each trust's trust securities out of funds from each trust's payment account. The guarantee trustee will hold the guarantee for the benefit of the holders of each of the trust's preferred securities. We will pay all fees and expenses related to the trusts and the offering of the preferred securities of each of the trusts, including fees and expenses of the trustees.

RATIOS OF EARNINGS TO FIXED CHARGES

The following table sets forth First Merchants Corporation's consolidated ratios of earnings to fixed charges for the periods shown:

	Nine Months Ended September 30, 2001 -----	Years Ended December 31, -----				
		2000 ----	1999 ----	1998 ----	1997 ----	1996 ----
Ratio of Earnings to Fixed Charges(1):						
Including interest expense on deposits.....	1.50x	1.49x	1.62x	1.62x	1.61x	1.62x
Excluding interest expense on deposits....	4.24x	3.73x	4.49x	6.98x	7.26x	7.26x

(1) For purposes of computing the ratios of earnings to fixed charges, earnings represent income before income taxes plus fixed charges. Fixed charges, excluding interest on deposits, includes gross interest expense less interest on deposits. Fixed charges, including interest on deposits, includes all gross interest expense.

USE OF PROCEEDS

Each trust will use all the proceeds of the preferred securities to acquire debentures from First Merchants Corporation. We intend to use the net proceeds from the sale of the debentures to the trusts for general corporate purposes unless otherwise indicated in the prospectus supplement. Our general corporate purposes may include financing our growth through acquisitions. The precise amounts and the timing of our use of the net proceeds will depend upon our need to finance future acquisitions and the availability of other funds. Until we use the net proceeds for general corporate purposes, we will use the net proceeds to reduce our short-term indebtedness or for temporary investments.

ACCOUNTING TREATMENT

Each trust will be treated as a subsidiary of First Merchants Corporation for financial reporting purposes. Accordingly, First Merchants Corporation's consolidated financial statements will include the accounts of each trust. The preferred securities, along with other preferred securities that First Merchants Corporation guarantees on an equivalent basis, will be presented as a separate line item in First Merchants Corporation's consolidated balance sheets. First Merchants Corporation will record distributions that each trust pays on the preferred securities as an expense in its consolidated statement of income.

DESCRIPTION OF THE PREFERRED SECURITIES

Each trust may issue only one series of preferred securities. The trust agreement of each trust will authorize the administrative trustees to issue the preferred securities of that trust on behalf of that trust. For additional information you should refer to the applicable trust agreement, as amended in connection with the issuance of the preferred securities. The form of trust agreement is an exhibit to the registration statement, of which this prospectus is a part.

The prospectus supplement for a particular series of preferred securities being offered will disclose the specific terms related to the offering, including the price or prices at which the preferred securities to be offered will be issued. Those terms will include some or all of the following:

- o the title of the series of preferred securities;
- o the number and initial offering price of preferred securities issued by the applicable trust;
- o the annual distribution rate (or method of determining such rate) for preferred securities issued by a trust and the date or dates upon which the distributions are payable;
- o the date or dates or method of determining the date or dates from which distributions on preferred securities will be cumulative;
- o the amount or amounts that will be paid out of the assets of the trust to the holders of preferred securities upon voluntary or involuntary dissolution, winding-up or termination of the applicable trust;
- o the obligation, if any, of the applicable trust to purchase or redeem the preferred securities and the price or prices at which, the period or periods within which, and the terms and conditions upon which, preferred securities will be purchased or redeemed, in whole or in part, pursuant to that obligation;

- o the voting rights, if any, of preferred securities in addition to those required by law, including the number of votes per preferred security and any requirement for the approval by the holders of preferred securities, as a condition to specified action or amendments to a trust agreement;
- o the terms and conditions, if any, upon which the debentures owned by the applicable trust may be distributed to holders of preferred securities;
- o the terms and conditions, if any, upon which the preferred securities may be converted into debt securities of First Merchants Corporation;
- o if applicable, any securities exchange upon which the preferred securities will be listed; and
- o any other relevant rights, preferences, privileges, limitations or restrictions of the trust securities not inconsistent with the trust agreements or with applicable law.

First Merchants Corporation will guarantee all preferred securities offered to the limited extent described below under "Description of the Guarantees."

We will describe in the applicable prospectus supplement any United States federal income tax considerations applicable to an offering of preferred securities.

DESCRIPTION OF THE DEBENTURES

Concurrently with the issuance of the preferred securities by a trust, that trust will invest the proceeds from the sale of the preferred securities in the debentures. First Merchants Corporation may issue debentures from time to time in one or more series under an indenture between First Merchants Corporation and First Union Trust Company, National Association, as indenture trustee, as supplemented by a supplemental indenture or a resolution of our board of directors or a special committee appointed by the board of directors. The terms of the debentures will include those stated in the indenture as supplemented and those made part of the indenture by reference to the Trust Indenture Act.

Below is a summary of the general terms of the debentures in which the trusts will invest the proceeds from the issuance and sale of the trust securities. We will describe the particular terms of the debentures in the prospectus supplement relating to the particular trust preferred securities that we will offer in that prospectus supplement. For additional information you should refer to the indenture and any applicable indenture supplement. The forms of indenture and supplemental indenture are filed as exhibits to the registration statement which contains this prospectus, which we urge prospective investors to read.

General

The debentures will be issued as unsecured debt of First Merchants Corporation. The debentures will be fully subordinated to all of our senior indebtedness. The specific terms of the subordination will be as described in the prospectus supplement relating to the particular preferred securities being offered. The indenture does not limit the aggregate principal amount of debentures which may be issued and provides that the debentures may be issued from time to time in one or more series.

The prospectus supplement relating to the particular series of preferred securities being offered will also describe the terms of the related debentures, which may include:

- o the designation of the debentures;
- o the aggregate principal amount of the debentures;
- o the percentage of their principal amount at which the debentures will be issued and any payments due if their maturity is accelerated;
- o the date or dates on which the debentures will mature and the right, if any, to shorten or extend the maturity date or dates;
- o the rate or rates, if any, per annum, at which the debentures will bear interest, or the method of determination of the interest rate or rates;
- o the date or dates from which interest will accrue and the interest payment and record dates;
- o the right, if any, to extend the interest payment periods and the duration of that extension;
- o provisions, if any, for a sinking purchase or other similar fund;
- o any provisions for redemption; and
- o any other specific terms of the debentures.

Payment

We will pay or deliver principal and any premium and interest in the manner, at the places and subject to the restrictions set forth in the indenture and applicable indenture supplement and prospectus supplement. At our option, we may pay any interest by check mailed to the holders of registered debentures at their registered address.

Limitations on Transactions

We are restricted from making certain payments (as described below) if an event of default has occurred and is continuing under the indenture or any supplement thereto, if we chose to defer payment of interest on the debentures by extending the interest payment period as provided in the indenture or any supplement thereto, or if we are in default with respect to our obligations under the guarantee relating to a trust.

If any of these events occur, we will not:

- o pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of our capital stock (other than (A) dividends or distributions in our common stock, or any declaration of a non-cash dividend in connection with the implementation of a shareholder 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, (B) purchases of our common stock related to the rights under any of the benefit plans for our directors, officers or employees, or (C) as a result of a reclassification of our capital stock into another class of our capital stock);

- o make any payment of interest, principal or premium, if any, or repay, repurchase or redeem any debt securities issued by us which rank pari passu with or junior to the debentures of such series or make any guarantee payments with respect to any guarantee by us of the debt securities of any subsidiary of ours if such guarantee ranks pari passu with or junior in interest to the debentures of such series, except that we may make payments pursuant to our obligations under the guarantee relating to such trust; and
- o redeem, purchase or acquire less than all of the outstanding debentures of such series or any of the preferred securities relating to such trust.

Subordination

The debentures will be unsecured and will be subordinated and junior in right of payment to all senior indebtedness of First Merchants Corporation to the extent described in the applicable prospectus supplement. The debentures purchased by each trust will be of equal priority to the debentures purchased by any other trust.

Consolidation, Merger, Sale of Assets and Other Transactions

We may not consolidate with or merge into any other entity or convey or transfer our properties and assets substantially as an entirety to any entity, and no entity may be consolidated with or merged into us or sell, convey, transfer or otherwise dispose of its assets substantially as an entirety to us, unless:

- o if we consolidate with or merge into another entity or transfer our properties and assets substantially as an entirety to any entity, the successor entity is organized under the laws of the United States or any state or the District of Columbia, and the successor entity expressly assumes by supplemental indenture our obligations on the debentures, and the ultimate parent entity of the successor entity expressly assumes our obligations under each of the guarantees, to the extent the preferred securities of each of the trusts are outstanding;
- o immediately after the transaction, no event of default under the indenture or any supplement thereto, and no event which, after notice or lapse of time, or both, would become an event of default under the indenture or any supplement thereto, has occurred and is continuing; and
- o other conditions as prescribed in the indentures are met.

Debenture Events of Default

The indenture provides that any one or more of the following events with respect to the debentures that has occurred and is continuing constitutes an event of default under the indenture:

- o our failure to pay any interest on the debentures for 30 days after the due date, except where we have properly deferred the interest payment;
- o our failure to pay any principal on the debentures when due whether at maturity, upon redemption or otherwise;
- o our failure to observe or perform in any material respect any other covenants or agreements contained in the indenture or applicable supplemental indenture for 90 days

after written notice to us from the indenture trustee or the holders of at least 25% in aggregate principal amount of the debentures of that series then outstanding; or

- o our bankruptcy, insolvency, reorganization in bankruptcy or dissolution.

The holders of a majority in aggregate outstanding principal amount of the debentures of any or all series affected generally have the right to direct the time, method and place of conducting any proceeding for any remedy available to the indenture trustee. The indenture trustee, or the holders of at least 25% in aggregate principal amount of the debentures of that series then outstanding may declare the principal of all debentures of that series due and payable immediately upon an event of default under the applicable indenture. The holders of a majority of the outstanding principal amount of the affected series of the debentures may rescind and annul the declaration and waive the default if the default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the indenture trustee as long as the holders of a majority in liquidation amount of the trust securities have consented to the waiver of the default. The holders may not annul the declaration and waive a default if the default is the non-payment of the principal of the debentures which has become due solely by the acceleration.

So long as the property trustee is the holder of the debentures, if an event of default under the indenture has occurred and is continuing, the property trustee will have the right to declare the principal of and the interest on the affected series of the debentures, and any other amounts payable under the indenture, to be immediately due and payable and to enforce its other rights as a creditor with respect to the debentures.

We are required to file annually with the indenture trustee a certificate as to whether or not we are in compliance with all of the conditions and covenants applicable to us under the indentures.

Additional Sums to be Paid as a Result of Additional Taxes

If, at any time a trust or the property trustee is required to pay any additional taxes, duties, assessments or other governmental charges of whatever nature, other than withholding taxes, imposed by the United States, or any other taxing authority, we will pay as additional interest on the debentures any amounts which may be required so that the net amounts received and retained by a trust after paying any additional taxes, duties, assessments or other governmental charges will not be less than the amounts a trust and the property trustee would have received had the additional taxes, duties, assessments or other governmental charges not been imposed.

Distribution Upon Liquidation

Under certain circumstances and with the Federal Reserve's approval if required by law or regulation, the debentures may be distributed to the holders of the preferred securities in liquidation of a trust after satisfaction of the liabilities to creditors of the affected trust. If this occurs, we will use our best efforts to list the debentures so affected on the Nasdaq National Market or other national securities exchange or national quotation system on which the preferred securities are then listed, if any. There can be no assurances as to the market price of any debentures that may be distributed to the holders of the preferred securities so affected.

Modification of the Indenture

We and the indenture trustee may, from time to time, without the consent of the holders of debentures, amend, waive our rights under or supplement the indenture for purposes which do not

materially adversely affect the rights of the holders of the debentures. Other changes may be made by us and the indenture trustee with the consent of the holders of a majority in principal amount of the series of affected outstanding debentures. However, without the consent of the holders of each outstanding debenture of the series affected by the proposed modification, no modification may:

- o extend the maturity date of the debentures; or
- o reduce the principal amount or the rate or extend the time of payment of interest; or
- o reduce the percentage of principal amount of the debentures required to amend the indenture.

As long as any of the preferred securities remain outstanding, no modification of the indenture or any applicable supplement thereto may be made that requires the consent of the holders of the applicable debentures, no termination of the indenture or any supplement thereto may occur, and no waiver of any event of default under the indenture or any supplement thereto may be effective, without the prior consent of the holders of a majority of the aggregate liquidation amount of the preferred securities so affected.

Satisfaction and Discharge

The indenture will cease to be of further effect and we will be deemed to have satisfied and discharged our obligations under the indenture when all debentures not previously delivered to the indenture trustee for cancellation:

- o have become due and payable, and
- o will become due and payable at their stated maturity within one year or are to be called for redemption within one year, and we deposit or cause to be deposited with the indenture trustee funds, in trust, for the purpose and in an amount sufficient to pay and discharge the entire indebtedness on the debentures not previously delivered to the indenture trustee for cancellation, for the principal and interest due to the date of deposit or to the stated maturity or redemption date, as the case may be.

We may still be required to provide officers' certificates and opinions of counsel any pay fees and expenses due after these events occur.

Governing Law

The indenture and the debentures will be governed by, and construed in accordance with, the internal laws of the State of Indiana.

Information Concerning the Indenture Trustee

The indenture trustee is subject to all the duties and responsibilities specified with respect to an indenture trustee under the Trust Indenture Act. Subject to these provisions, the indenture trustee is under no obligation to exercise any of the powers vested in it by the indenture at the request of any holder of debentures, unless offered reasonable security or indemnity by the holder against the costs, expenses, and liabilities which might be incurred. The indenture trustee is not required to expend or risk its own funds or otherwise incur personal financial liability in the performance of its duties if the

indenture trustee reasonably believes that repayment or adequate indemnity is not reasonably assured to it.

Miscellaneous

In the event a series of debentures is issued to a trust or a trustee of such trust in connection with the issuance of trust securities by such trust, so long as the applicable trust securities remain outstanding, we have agreed in the indenture:

- o to maintain 100% direct or indirect ownership of the common securities of such trust, except that successors that are permitted pursuant to the indenture or any supplement thereto may succeed to our ownership of the common securities of such trust;
- o not to voluntarily terminate, wind up or liquidate such trust, except upon prior approval of the Federal Reserve if required by law or regulation;
- o to use our reasonable efforts to cause such trust (a) to remain a business trust (and to avoid involuntary termination, winding up or liquidation), except in connection with a distribution of the debentures of such series, the redemption of all of the trust securities of such trust or certain mergers, consolidations or amalgamations, each as permitted by the trust agreement of such trust; and (b) to otherwise continue not to be treated as an association taxable as a corporation or partnership for United States federal income tax purposes;
- o to use our reasonable efforts to cause each holder of preferred securities of such trust to be treated as owning an undivided beneficial interest in the debentures of such series; and
- o to use our best efforts to maintain the eligibility of such preferred securities for quotation or listing on any national securities exchange or other organization on which such preferred securities are then quoted or listed (including, if applicable, The Nasdaq National Market) and to use our best efforts to keep such preferred securities so quoted or listed for so long as such preferred securities remain outstanding.

DESCRIPTION OF THE GUARANTEES

Set forth below is a summary of information concerning the guarantees which we will execute and deliver in connection with a particular offering for the benefit of the holders of preferred securities. The guarantee agreements will be executed and delivered by us concurrently with the issuance of the corresponding preferred securities for the benefit of the holders of those preferred securities. The guarantee agreements will be qualified as indentures under the Trust Indenture Act. First Union Trust Company, National Association, the guarantee trustee, will act as trustee for purposes of complying with the provisions of the Trust Indenture Act, and will also hold the guarantees for the benefit of the holders of the preferred securities. The following discussion contains a description of the material provisions of the guarantees and is subject to, and is qualified in its entirety by reference to, the guarantee agreements and the Trust Indenture Act. Prospective investors are urged to read the form of the guarantee agreements which have been filed as an exhibit to the registration statement of which this prospectus forms a part.

General

Under each guarantee, we will agree to pay in full on a subordinated basis, to the extent described in each guarantee agreement, the guarantee payments (as defined below) to the holders of the preferred securities, as and when due, regardless of any defense, right of set-off or counterclaim that the applicable trust may have or assert other than the defense of payment.

The following payments with respect to the preferred securities are called the "guarantee payments" and, to the extent not paid or made by the applicable trust and to the extent that that trust has funds available for those distributions, will be subject to the guarantee:

- o any accumulated and unpaid distributions required to be paid on the preferred securities;
- o with respect to any preferred securities called for redemption, the redemption price; and
- o upon a voluntary or involuntary dissolution, winding up or termination of a trust (other than in connection with the distribution of debentures to the holders of preferred securities in exchange for preferred securities) the lesser of:
 - o the amount of the liquidation distribution; and
 - o the amount of assets of the trust remaining available for distribution to holders of preferred securities in liquidation of the trust.

We may satisfy our obligations to make a guarantee payment by making a direct payment of the required amounts to the holders of the related preferred securities or by causing the applicable trust to pay the amounts to the holders.

Each guarantee agreement is a guarantee, on a subordinated basis, of the guarantee payments, but the guarantee only applies to the extent the applicable trust has funds available for those distributions. If we do not make interest payments on the debentures purchased by the applicable trust, that trust will not have funds available to make the distributions and will not pay distributions on the corresponding preferred securities.

Amendments

Except with respect to any changes which do not adversely affect the rights of holders of trust preferred securities, in which case no consent will be required, the guarantees may be amended only with the prior approval of the holders of not less than a majority in aggregate liquidation amount of the applicable outstanding preferred securities.

Termination of the Guarantees

Each of the guarantees will terminate and be of no further force and effect upon:

- o full payment of the redemption price of the preferred securities;
- o full payment of the amounts payable upon liquidation of the trust; or
- o distribution of the debentures to the holders of the preferred securities.

If at any time any holder of the preferred securities must restore payment of any sums paid under the preferred securities or a guarantee, the corresponding guarantee will continue to be effective or will be reinstated with respect to such amounts.

Events of Default; Remedies

An event of default under a guarantee agreement will occur upon our failure to make a required guarantee payment or to perform any other obligations under such guarantee. If the guarantee trustee obtains actual knowledge that an event of default has occurred and is continuing, the guarantee trustee must enforce the applicable guarantee for the benefit of the holders of the preferred securities so affected. The holders of a majority in aggregate liquidation amount of the preferred securities so affected will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee in respect of the applicable guarantee and may direct the exercise of any power conferred upon the guarantee trustee under the applicable guarantee agreement.

Any holder of preferred securities may institute and prosecute a legal proceeding directly against us to enforce its rights under the applicable guarantee without first instituting a legal proceeding against the corresponding trust, the guarantee trustee or any other person or entity.

We are required to provide to the guarantee trustee annually a certificate as to whether or not we are in compliance with all of the conditions and covenants applicable to us under the guarantee agreements.

Status of the Guarantees

The guarantees constitute our unsecured obligations that rank subordinate and junior in right of payment to all of our senior and subordinated debt in the same manner as the debentures. We expect to incur additional indebtedness in the future. Except in certain circumstances that may be described in any prospectus supplement limiting our ability to issue additional preferred securities or similar securities or indebtedness, our ability to incur additional indebtedness is not limited.

The guarantees constitute a guarantee of payment and not of collection. If we fail to make guarantee payments when required, holders of preferred securities may institute a legal proceeding directly against us to enforce their rights under the applicable guarantee without first instituting a legal proceeding against any other person or entity.

The guarantees will not be discharged except by payment of the guarantee payments in full to the extent not paid by the applicable trust or upon distribution of the debentures to the corresponding holders of the preferred securities. Because we are a bank holding company, our right to participate in any distribution of assets of any subsidiary upon the subsidiary's liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent we may be recognized as a creditor of that subsidiary. The ability of claimants under the guarantees to realize upon the value of any of our subsidiaries, therefore, will be subordinated to all existing and future liabilities of our subsidiaries.

Information Concerning the Guarantee Trustee

The guarantee trustee, other than during the occurrence and continuance of our default in performance of a guarantee, undertakes to perform only those duties as are specifically set forth in the guarantees. When an event of default has occurred and is continuing, the guarantee trustee must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. The guarantee trustee is under no obligation to exercise any of the powers vested in it by the

guarantees at the request of any holder of any corresponding preferred securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that might be incurred thereby; but this does not relieve the guarantee trustee of its obligations to exercise the rights and powers under the guarantees in the event of a default.

Expense Agreement

We will, pursuant to the agreement as to expenses and liabilities entered into by us and each trust under the applicable trust agreement, irrevocably and unconditionally guarantee to each person or entity to whom such trust becomes indebted or liable, the full payment of any costs, expenses or liabilities of such trust, other than obligations of such trust to pay to the holders of the preferred securities or other similar interests in the trust of the amounts due to the holders pursuant to the terms of the preferred securities or other similar interests, as the case may be. Third party creditors of a trust may proceed directly against us under the expense agreement, regardless of whether they had notice of the expense agreement.

Governing Law

The guarantees will be governed by and construed in accordance with the internal laws of the State of Indiana.

RELATIONSHIP AMONG THE PREFERRED SECURITIES, THE DEBENTURES AND THE GUARANTEE

Full and Unconditional Guarantee

We irrevocably guarantee, as and to the extent described in this prospectus and any supplemental prospectus, payments of distributions and other amounts due on the preferred securities, to the extent the applicable trust has funds available for the payment of these amounts. We and the applicable trust believe that, taken together, our obligations under the debentures, the indenture, the applicable trust agreement, the applicable expense agreement and the applicable guarantee agreement provide, in the aggregate, a full, irrevocable and unconditional guarantee, on a subordinated basis, of payment of distributions and other amounts due on the applicable preferred securities. No single document standing alone or operating in conjunction with fewer than all of the other documents constitutes a guarantee. It is only the combined operation of these documents that has the effect of providing a full, irrevocable and unconditional guarantee of the obligations of the applicable trust under the applicable preferred securities.

If and to the extent that we do not make payments on the debentures, the applicable trust will not pay distributions or other amounts due on its preferred securities. The applicable guarantee does not cover payment of distributions when the applicable trust does not have sufficient funds to pay the distributions. In this event, the remedy of a holder of preferred securities is to institute a legal proceeding directly against us for enforcement of payment of the distributions to the holder. Our obligations under the guarantees are subordinated and junior in right of payment to all of our other indebtedness.

Sufficiency of Payments

As long as payments of interest and other payments are made when due on the debentures purchased by a trust, those payments will be sufficient to cover distributions and other payments due on the trust preferred securities issued by such trust, primarily because:

- o the aggregate principal amount of the debentures will be equal to the sum of the aggregate stated liquidation amount of the trust securities;
- o the interest rate and interest and other payment dates on the debentures will match the distribution rate and distribution and other payment dates for the preferred securities;
- o we will pay for any and all costs, expenses and liabilities of the trust, except the obligations of the trust to pay to holders of the preferred securities the amounts due to the holders pursuant to the terms of the preferred securities; and
- o the trust will not engage in any activity that is not consistent with the limited purposes of the trust.

Enforcement Rights of Holders of Preferred Securities

A holder of any preferred security may institute a legal proceeding directly against us to enforce its rights under the applicable guarantee without first instituting a legal proceeding against the applicable guarantee trustee, the applicable trust or any other person. A default or event of default under any of our senior or subordinated debt would not constitute a default or event of default under the applicable trust agreement. In the event, however, of payment defaults under, or acceleration of, our senior or subordinated debt, the subordination provisions of the indenture provides that no payments may be made in respect of the applicable debentures until the obligations have been paid in full or any payment default has been cured or waived. Failure to make required payments on the debentures would constitute an event of default under the applicable trust agreement.

Limited Purpose of Trusts

The preferred securities evidence preferred undivided beneficial interests in the assets of the corresponding trust. The trusts exist for the exclusive purposes of issuing the trust securities, investing the proceeds thereof in debentures and engaging only in those other activities necessary, advisable or incidental thereto. A principal difference between the rights of a holder of a preferred security and the rights of a holder of a debenture is that a holder of a debenture is entitled to receive from us the principal amount of and interest accrued on debentures held, while a holder of preferred securities is entitled to receive distributions from the corresponding trust (or from us under the corresponding guarantee) if and to the extent the trust has funds available for the payment of such distributions.

Rights Upon Termination

Upon any voluntary or involuntary termination, winding-up or liquidation of a trust involving the liquidation of the debentures, the holders of the preferred securities will be entitled to receive, out of assets held by the trust, the liquidation distribution in cash.

Upon or voluntary or involuntary liquidation or bankruptcy, the property trustee, as holder of the debentures, would be a subordinated creditor of ours. Therefore, the property trustee would be subordinated in right of payment to all of our senior and subordinated debt, but is entitled to receive payment in full of principal and interest before any of our shareholders receive payments or distributions. Since we are the guarantor under the guarantee and have agreed to pay for all costs, expenses and liabilities of the trusts other than the obligations of the trusts to pay to holders of the preferred securities the amounts due to the holders pursuant to the terms of the preferred securities, the positions of a holder of the preferred securities and a holder of the debentures relative to our other creditors and to our shareholders in the event of liquidation or bankruptcy are expected to be substantially the same.

PLAN OF DISTRIBUTION

The trusts or we may sell the preferred securities:

- o through underwriters or dealers,
- o directly to one or a limited number of institutional purchasers; or
- o through agents.

The applicable prospectus supplement will set forth the terms of the offering of any preferred securities, including the name or names of any underwriters, dealers or agents, the price of the preferred securities and the net proceeds to us from such sale, any underwriting commissions or other items constituting underwriters' compensation.

If underwriters are used in the sale, the preferred securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The preferred securities may be offered to the public either through underwriting syndicates represented by managing underwriters or directly by one or more investment banking firms or others, as designated.

If we use a dealer in the sale of any preferred securities, we will sell those preferred securities to the dealer, as principal. The dealer may then resell the preferred securities to the public at varying prices to be determined by the dealer at the time of resale.

We may sell preferred securities directly to one or more institutional purchasers, or through agents at a fixed price or prices, which may be changed, or at varying prices determined at time of sale. Unless otherwise indicated in the prospectus supplement, any agent will be acting on a best effort basis for the period of its appointment.

Unless otherwise set forth in the applicable prospectus supplement, the obligations of the underwriters or agents to purchase the preferred securities will be subject to conditions precedent and the underwriters will be obligated to purchase all the preferred securities if any are purchased. Any initial public offering price and any underwriting commissions or other items constituting underwriters' compensation may be changed from time to time. If an applicable prospectus supplement so indicates, we will authorize agents, underwriters or dealers to solicit offers by specified institutions to purchase trust preferred securities from us at the public offering price set forth in the prospectus supplement under delayed delivery contracts providing for payment and delivery on a specified date in the future. These contracts will be subject only to those conditions set forth in the prospectus supplement, and the prospectus supplement will set forth the commission payable for solicitation of the contracts.

Under agreements entered into with us, agents and underwriters who participate in the distribution of the trust preferred securities may be entitled to indemnification by us against certain civil liabilities, including liabilities under the Securities Act of 1933, or to contribution with respect to payments which the agents or underwriters may be required to make. Agents and underwriters may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

LEGAL OPINIONS

The validity of the debentures and the guarantees will be passed upon for us by Bingham Summers Welsh & Spilman, LLP, Indianapolis, Indiana. The validity of the trust securities will be passed upon for the trusts by Richards, Layton & Finger, P.A., Wilmington, Delaware, special counsel to the trusts. If the securities are being distributed in an underwritten offering, related legal matters will be passed upon for the underwriters by counsel identified in the related prospectus supplement.

EXPERTS

The consolidated financial statements of First Merchants Corporation as of December 31, 2000 and 1999 and for each of the years in the three year period ended December 31, 2000 incorporated in this prospectus and in the registration statement by reference to our Annual Report on Form 10-K for the year ended December 31, 2000 have been audited by BKD, LLP, independent auditors, as stated in their report, which is incorporated by reference herein and in the registration statement and have been so incorporated in reliance upon the report of such firm, given upon their authority as experts in auditing and accounting. Olive LLP and Baird, Kurtz & Dobson merged effective June 1, 2001, to become BKD, LLP.

The consolidated financial statements of Lafayette Bancorporation as of December 31, 2000 and 1999 and for each of the three years in the period ended December 31, 2000, which are incorporated in this prospectus and in the registration statement by reference to our Current Report on Form 8-K filed December 21, 2001, have been audited by Crowe, Chizek and Company LLP, independent auditors, as set forth in their report thereon incorporated by reference herein and in the registration statement and have been so incorporated in reliance upon the report of such firm, given upon their authority as experts in auditing and accounting.

WHERE YOU CAN GET MORE INFORMATION

This prospectus is a part of a Registration Statement on Form S-3 filed by us and the trusts with the Securities and Exchange Commission under the Securities Act of 1933, with respect to the preferred securities, the debentures and the guarantees. This prospectus does not contain all the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the Securities and Exchange Commission. For further information with respect to us and the securities offered by this prospectus, reference is made to the registration statement. Statements contained in this prospectus concerning the provisions of such documents are necessarily summaries of such documents and each such statement is qualified in its entirety by reference to the copy of the applicable documents filed with the Securities and Exchange Commission.

We file periodic reports, proxy statements and other information with the Securities and Exchange Commission. Our filings are available to the public over the Internet at the Securities and Exchange Commission's website at <http://www.sec.gov>. You may also inspect and copy these materials at the Public Reference Room of the Securities and Exchange Commission at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. Copies of such material can be obtained at prescribed rates from the Public Reference Section of the Securities and Exchange Commission at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. You may also obtain additional information about us on our website at <http://www.firstmerchants.com>.

The trusts are not currently subject to the information reporting requirements of the Securities Exchange Act of 1934 and, although the trusts will become subject to such requirements upon the

effectiveness of the registration statement, it is not expected that the trusts will file separate reports under the Exchange Act.

DOCUMENTS INCORPORATED BY REFERENCE

We "incorporate by reference" into this prospectus the information in documents we file with the Securities and Exchange Commission, which means that we can disclose important information to you through those documents. The information incorporated by reference is an important part of this prospectus. Some information contained in this prospectus updates the information incorporated by reference and some information we file subsequently with the Securities and Exchange Commission will automatically update this prospectus. We incorporate by reference:

- o Our Annual Report on Form 10-K for the fiscal year ended December 31, 2000 (as amended by a Form 10-K/A filed October 29, 2001);
- o Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2001;
- o Our Current Report on Form 8-K filed on April 19, 2001, announcing our repurchase of 118,088 shares of our common stock;
- o Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2001;
- o Our Current Report on Form 8-K filed on August 23, 2001, announcing a 5% stock dividend declared on shares of our outstanding common stock;
- o Our Quarterly Report on Form 10-Q for the quarter ended September 30, 2001 (as amended by Form 10-Q/A filed December 19, 2001);
- o Our Current Report on Form 8-K filed on October 15, 2001, announcing the execution of an agreement dated October 14, 2001 between Lafayette Bancorporation and First Merchants Corporation pursuant to which Lafayette Bancorporation will be merged with and into First Merchants Corporation; and
- o Our Current Report on Form 8-K filed on December 21, 2001, containing consolidated financial statements of Lafayette Bancorporation, pro forma financial information of First Merchants Corporation and announcing the execution of two agreements dated November 27, 2001 pursuant to which First Merchants Corporation will acquire two title insurance agencies.

We also incorporate by reference any filings we make with the Securities and Exchange Commission under Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 after the initial filing of the registration statement that contains this prospectus and before the time that all of the securities offered in this prospectus are sold.

You may request, either orally or in writing, a copy of the documents incorporated by reference by contacting Larry R. Helms, our General Counsel, at the following address and phone number: 200 East Jackson, Muncie, Indiana 47305, telephone (765) 747-1500. Any documents so requested will be provided to you at no cost.

You should rely only on the information incorporated by reference or provided in this prospectus or the prospectus supplement. We have authorized no one to provide you with different information. We

are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this prospectus or the prospectus supplement is accurate as of any date other than the date on the front of the document.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. Other Expenses of Issuance and Distribution.

The estimated expenses paid by First Merchants Corporation in connection with the issuance and distribution of the securities being registered hereby, other than underwriting discounts and commissions, are as follows:

Securities and Exchange Commission Registration Fee.....	\$ 18,750
Legal Fees and Expenses.....	\$100,000
Accountants' Fees and Expenses.....	\$ 30,000
Trustee's Fees and Expenses.....	\$ 15,000
Printing and Engraving Expenses.....	\$ 50,000
Miscellaneous.....	\$ 25,000

Total.....	\$238,750
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ITEM 15. Indemnification of Directors and Officers of First Merchants Corporation.

First Merchants Corporation ("First Merchants") is an Indiana corporation. Section 23-1-37-1 et seq. of the Indiana Business Corporation Law contains detailed provisions on indemnification of directors and officers of an Indiana corporation against expenses, judgments, settlements, penalties and fines incurred with respect to certain proceedings.

First Merchants' Articles of Incorporation, as amended, and By-Laws, as amended, provide that First Merchants will indemnify any person who is or was a director, officer or employee of First Merchants or of any other corporation for which he is or was serving in any capacity at the request of First Merchants against all liability and expense that may be incurred in connection with, resulting from or arising out of any claim, action, suit or proceeding with respect to which such director, officer or employee is wholly successful or acted in good faith in a manner he reasonably believed to be in, or not opposed to, the best interests of First Merchants or such other corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. A director, officer or employee of First Merchants is entitled to be indemnified as a matter of right with respect to those claims, actions, suits or proceedings where he has been wholly successful. In all other cases, such director, officer or employee will be indemnified only if the Board of Directors of First Merchants (acting by a quorum consisting of directors who are not parties to or who have been wholly successful with respect to such action) or independent legal counsel finds that he has met the standards of conduct set forth above.

The directors and officers of First Merchants are covered by an insurance policy indemnifying them against certain civil liabilities, including liabilities under the federal securities laws, which might be incurred by them in such capacity.

The Trust Agreement of each First Merchants Capital Trust limits the liability to each trust and certain persons, and provides for the indemnification by First Merchants, of trustees, their officers, directors, employees and certain other persons.

ITEM 16. List of Exhibits.

Exhibit	Description
*1.1	Form of Underwriting Agreement
**3.1	Articles of Incorporation of First Merchants Corporation incorporated by reference to Exhibit 3.1 to First Merchants Corporation's Form 10-Q for the quarterly period ended June 30, 1999
**3.2	Bylaws of First Merchants Corporation incorporated by reference to First Merchants Corporation's Form 10-Q for the quarterly period ended September 30, 2001 (as amended by Form 10-Q/A filed December 19, 2001)
**4.1	Certificate of Trust of First Merchants Capital Trust I
**4.2	Trust Agreement of First Merchants Capital Trust I
**4.3	Certificate of Trust of First Merchants Capital Trust II
**4.4	Trust Agreement of First Merchants Capital Trust II
**4.5	Certificate of Trust of First Merchants Capital Trust III
**4.6	Trust Agreement of First Merchants Capital Trust III
**4.7	Form of Preferred Securities Guarantee Agreement to be issued by First Merchants Corporation (Agreements for First Merchants Capital Trust I, First Merchants Capital Trust II, and First Merchants Capital Trust III are substantially identical except for names and dates)
**4.8	Form of Amended and Restated Trust Agreement to be used in connection with the issuance of the Trust Preferred Securities
**4.9	Form of [____]% Cumulative Trust Preferred Security Certificate to be issued by First Merchants Capital Trust I, II and III (included as Exhibit D to Exhibit 4.8 to this Registration Statement)
**4.10	Form of Indenture
**4.11	Form of First Supplemental Indenture
**4.12	Form of [____]% Junior Subordinated Debenture to be issued by First Merchants Corporation (included as Exhibit A to Exhibit 4.11 to this Registration Statement)
**5.1	Opinion of Bingham Summers Welsh & Spilman, LLP with respect to legality of the Junior Subordinated Debentures and the Preferred Securities Guarantee Agreement
**5.2	Opinion of Richards, Layton & Finger, P.A. with respect to the legality of the Trust Preferred Securities
*8.1	Opinion of Bingham Summers Welsh & Spilman LLP as to federal income tax matters
**12.1	Computation of Ratio of Earnings to Combined Fixed Charges
23.1	Consent of Bingham Summers Welsh & Spilman LLP (included as part of Exhibits 5.1 and 8.1)
23.2	Consent of Richards, Layton & Finger, P.A. (included as part of Exhibit 5.2)
**23.3	Consent of Crowe, Chizek and Company LLP
**23.4	Consent of BKD, LLP
24.1	Power of Attorney of Directors and Officers of the Registrant (included on Registration Statement Signature Page)
*25.1	Form T-1 Statement of Eligibility of Trustee for the Trust Preferred Securities
*25.2	Form T-1 Statement of Eligibility of Trustee for the Junior Subordinated Debentures
*25.3	Form-T-1 Statement of Eligibility of Trustee for the Preferred Securities Guarantee Agreement

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* To be filed as an exhibit to the registrant's Current Report on Form 8-K in connection with a specific offering.

** Filed herewith.

ITEM 17. Undertakings.

The undersigned Registrants hereby undertake:

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

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

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

provided, however, that clauses (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed by First Merchants Corporation pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of First Merchants Corporation's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(5) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of each of the Registrants pursuant to the provisions of Item 15 of this Registration Statement, or otherwise, each Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by First Merchants Corporation of

expenses incurred or paid by a director, officer or controlling person of each of the Registrants in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, each Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy, as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(6) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(7) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act of 1939 in accordance with the rules and regulations prescribed by the Securities and Commission under Section 305(b)(2) of the Trust Indenture Act of 1939.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, First Merchants Corporation certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Muncie, State of Indiana, on December 21, 2001.

FIRST MERCHANTS CORPORATION

By: /s/ Michael L. Cox

Michael L. Cox
President and Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Michael L. Cox and Larry R. Helms and each of them his true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and any subsequent registration statement filed by First Merchants Corporation pursuant to Rule 462(b) of the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorney-in-fact and agents full power and authority to perform each and every act and thing requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed as of the 21st day of December, 2001 by the following persons in the capacities indicated.

Signature	Title
/s/ Michael L. Cox ----- Michael L. Cox	President, Chief Executive Officer and Director (Principal Executive Officer)
/s/ James L. Thrash ----- James L. Thrash	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
/s/ Stefan S. Anderson ----- Stefan S. Anderson	Director
/s/ Roger M. Arwood ----- Roger M. Arwood	Director
/s/ James F. Ault ----- James F. Ault	Director
/s/ Jerry M. Ault ----- Jerry M. Ault	Director
/s/ Dennis A. Bierberich ----- Dennis A. Bieberich	Director
/s/ Frank A. Bracken ----- Frank A. Bracken	Director
/s/ Blaine A. Brownell ----- Blaine A. Brownell	Director

/s/ Thomas B. Clark

Director

Thomas B. Clark

/s/ Barry J. Hudson

Director

Barry J. Hudson

/s/ Norman M. Johnson

Director

Norman M. Johnson

/s/ George A. Sissel

Director

George A. Sissel

/s/ Robert M. Smitson

Director

Robert M. Smitson

/s/ John E. Worthen

Director

John E. Worthen

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, First Merchants Capital Trust I certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Muncie, State of Indiana on December 21, 2001.

First Merchants Capital Trust I

By: First Merchants Corporation, as Sponsor

By: /s/ Michael L. Cox

Michael L. Cox
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, First Merchants Capital Trust II certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Muncie, State of Indiana on December 21, 2001.

First Merchants Capital Trust II

By: First Merchants Corporation, as Sponsor

By: /s/ Michael L. Cox

Michael L. Cox
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, First Merchants Capital Trust III certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Muncie, State of Indiana on December 21, 2001.

First Merchants Capital Trust III

By: First Merchants Corporation, as Sponsor

By: /s/ Michael L. Cox

Michael L. Cox
President and Chief Executive Officer

EXHIBIT INDEX

Exhibit	Description
- - - - -	- - - - -
*1.1	Form of Underwriting Agreement
**3.1	Articles of Incorporation of First Merchants Corporation incorporated by reference to Exhibit 3.1 to First Merchants Corporation's Form 10-Q for the quarterly period ended June 30, 1999
**3.2	Bylaws of First Merchants Corporation incorporated by reference to First Merchants Corporation's Form 10-Q for the quarterly period ended September 30, 2001 (as amended by Form 10-Q/A filed December 19, 2001)
**4.1	Certificate of Trust of First Merchants Capital Trust I
**4.2	Trust Agreement of First Merchants Capital Trust I
**4.3	Certificate of Trust of First Merchants Capital Trust II
**4.4	Trust Agreement of First Merchants Capital Trust II
**4.5	Certificate of Trust of First Merchants Capital Trust III
**4.6	Trust Agreement of First Merchants Capital Trust III
**4.7	Form of Preferred Securities Guarantee Agreement to be issued by First Merchants Corporation (Agreements for First Merchants Capital Trust I, First Merchants Capital Trust II, and First Merchants Capital Trust III are substantially identical except for names and dates)
**4.8	Form of Amended and Restated Trust Agreement to be used in connection with the issuance of the Trust Preferred Securities
**4.9	Form of [____]% Cumulative Trust Preferred Security Certificate to be issued by First Merchants Capital Trust I, II and III (included as Exhibit D to Exhibit 4.8 to this Registration Statement)
**4.10	Form of Indenture
**4.11	Form of First Supplemental Indenture
**4.12	Form of [____]% Junior Subordinated Debenture to be issued by First Merchants Corporation (included as Exhibit A to Exhibit 4.11 to this Registration Statement)
**5.1	Opinion of Bingham Summers Welsh & Spilman, LLP with respect to legality of the Junior Subordinated Debentures and the Preferred Securities Guarantee Agreement
**5.2	Opinion of Richards, Layton & Finger, P.A. with respect to the legality of the Trust Preferred Securities
*8.1	Opinion of Bingham Summers Welsh & Spilman LLP as to federal income tax matters
**12.1	Computation of Ratio of Earnings to Combined Fixed Charges
23.1	Consent of Bingham Summers Welsh & Spilman LLP (included as part of Exhibits 5.1 and 8.1)
23.2	Consent of Richards, Layton & Finger, P.A. (included as part of Exhibit 5.2)
**23.3	Consent of Crowe, Chizek and Company LLP
**23.4	Consent of BKD, LLP
24.1	Power of Attorney of Directors and Officers of the Registrant (included on Registration Statement Signature Page)
*25.1	Form T-1 Statement of Eligibility of Trustee for the Trust Preferred Securities
*25.2	Form T-1 Statement of Eligibility of Trustee for the Junior Subordinated Debentures
*25.3	Form-T-1 Statement of Eligibility of Trustee for the Preferred Securities Guarantee Agreement

- - - - -
 * To be filed as an exhibit to the registrant's Current Report on Form 8-K in connection with a specific offering.

** Filed herewith.

CERTIFICATE OF TRUST

OF

FIRST MERCHANTS CAPITAL TRUST I

This Certificate of Trust is being executed as of December 12, 2001 for the purposes of organizing a business trust pursuant to the Delaware Business Trust Act, 12 Del. C.ss.ss.3801 et seq. (the "Act").

The undersigned hereby certifies as follows:

- 1. Name. The name of the business trust is "First Merchants Capital Trust I" (the "Trust").
- 2. Delaware Trustee. The name and business address of the Delaware trustee of the Trust meeting the requirements of Section 3807 of the Act are as follows:

First Union Trust Company, National Association
One Rodney Square
920 King Street
Suite 102
Wilmington, Delaware 19801
Attention: Corporate Trust Trustee Administration
- 3. Effective. This Certificate of Trust shall be effective immediately upon filing in the Office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned being all of the trustees of the Trust, have duly executed this Certificate of Trust as of the day and year first above written.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION
as Delaware Trustee

By: /s/ Edward L. Truitt, Jr.

Name: Edward L. Truitt, Jr.

Title: Vice President

ADMINISTRATIVE TRUSTEE

/s/ Michael L. Cox

Michael L. Cox

ADMINISTRATIVE TRUSTEE

/s/ Larry R. Helms

Larry R. Helms, Esq.

ADMINISTRATIVE TRUSTEE

/s/ Mark K. Hardwick

Mark K. Hardwick

FIRST MERCHANTS CAPITAL TRUST I
TRUST AGREEMENT

This TRUST AGREEMENT, dated as of December 12, 2001 (this "Trust Agreement"), among (i) First Merchants Corporation, an Indiana corporation (the "Depositor"), (ii) First Union Trust Company, National Association, as trustee, and (iii) Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each an individual, as trustees (each of such trustees in (ii) and (iii) a "Trustee" and collectively, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby (the "Trust") shall be known as "First Merchants Capital Trust I" in which name the Trustees, or the Depositor to the extent provided herein, may engage in the transactions contemplated hereby, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10.00. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801, et seq. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

3. The Depositor and the Trustees will enter into an amended and restated Trust Agreement, satisfactory to each such party and substantially in the form included as an exhibit to the 1933 Act Registration Statement (as defined below), to provide for the contemplated operation of the Trust created hereby and the issuance of the Preferred Securities and Common Securities referred to therein. Prior to the execution and delivery of such amended and restated Trust Agreement, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery of any licenses, consents or approvals required by applicable law or otherwise.

4. The Depositor and the Trustees hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to the 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, (the "1933 Act") of the Preferred Securities of the Trust (including any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the 1933 Act), and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments

thereto) relating to the registration of the Preferred Securities of the Trust under the Securities Exchange Act of 1934, as amended; (ii) to file with Nasdaq or a national stock exchange (each, an "Exchange") and execute on behalf of the Trust one or more listing applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on any of the Exchanges; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or blue sky laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable; and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Preferred Securities, among the Trust, the Depositor and the Underwriter named therein, substantially in the form included as an exhibit to the 1933 Act Registration Statement. In the event that any filing referred to in clauses (i), (ii) and (iii) above is required by the rules and regulations of the Commission, an Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by one or more of the Trustees, each of the Trustees, in its, her or his capacity as a Trustee of the Trust, is hereby authorized and, to the extent so required, directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that First Union Trust Company, National Association in its capacity as a Trustee of the Trust shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws. In connection with the filings referred to above, the Depositor and Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each as Trustees and not in their individual capacities, hereby constitute and appoint Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, and each of them, as its true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or such Trustee or in the Depositor's or such

Trustees' name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, the Exchange and administrators of the state securities or blue sky laws, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor or such Trustee might or could to in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Trust Agreement may be executed in one or more counterparts.

6. The number of Trustees initially shall be four and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be 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 and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. The Trustees may resign upon 30 days' prior notice to the Depositor.

7. This Trust Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws of principles).

8. The Trustees (the "Fiduciary Indemnified Persons") shall not be liable, responsible or accountable in damages or otherwise to the Trust, the Depositor, the Trustees or any holder of the Trust's securities (the Trust, the Depositor and any holder of the Trust's securities being a "Covered Person") for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Fiduciary Indemnified Persons in good faith on behalf of the Trust and in a manner the Fiduciary Indemnified Persons reasonably believed to be within the scope of authority conferred on the Fiduciary Indemnified Persons by this Trust Agreement or by law, except that the Fiduciary Indemnified Persons shall be liable for any such loss, damage or claim incurred by reason of the Fiduciary Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

The Fiduciary Indemnified Persons 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 Fiduciary Indemnified Persons 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 Trust's securities might properly be paid.

9. The Depositor agrees, to the fullest extent permitted by applicable law,

(a) to indemnify and hold harmless each Fiduciary Indemnified Person, or any of its officers, directors, shareholders, employees, representatives or agents, from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by the Fiduciary Indemnified Persons by reason of the creation, operation or termination of the Trust in a manner the Fiduciary Indemnified Persons reasonably believed to be within the scope of authority conferred on the Fiduciary Indemnified Persons by this Trust Agreement, except that no Fiduciary Indemnified Persons shall be entitled to be indemnified in respect of any loss, damage or claim incurred by the Fiduciary Indemnified Persons by reason of gross negligence or willful misconduct with respect to such acts or omissions; and

(b) to advance expenses (including legal fees) incurred by a Fiduciary Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, prior to the final disposition of such claim, demand, action, suit or proceeding, upon

receipt by the Trust of an undertaking by or on behalf of such Fiduciary Indemnified Persons to repay such amount if it shall be determined that such Fiduciary Indemnified Person is not entitled to be indemnified as authorized in the preceding subsection.

10. The provisions of Section 9 shall survive the termination of this Trust Agreement or the earlier resignation or removal of the Fiduciary Indemnified Persons.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed as of the day and year first above written.

FIRST MERCHANTS CORPORATION,
as Depositor

By: /s/ Michael L. Cox

Name: Michael L. Cox

Title: President & CEO

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Edward L. Truitt, Jr.

Name: Edward L. Truitt, Jr.

Title: Vice President

/s/ Michael L. Cox , as Trustee

Michael L. Cox

/s/ Larry R. Helms , as Trustee

Larry R. Helms, Esq.

/s/ Mark K. Hardwick , as Trustee

Mark K. Hardwick

CERTIFICATE OF TRUST

OF

FIRST MERCHANTS CAPITAL TRUST II

This Certificate of Trust is being executed as of December 12, 2001 for the purposes of organizing a business trust pursuant to the Delaware Business Trust Act, 12 Del. C.ss.ss.3801 et seq. (the "Act").

The undersigned hereby certifies as follows:

- 1. Name. The name of the business trust is "First Merchants Capital Trust II" (the "Trust").
- 2. Delaware Trustee. The name and business address of the Delaware trustee of the Trust meeting the requirements of Section 3807 of the Act are as follows:

First Union Trust Company, National Association
One Rodney Square
920 King Street
Suite 102
Wilmington, Delaware 19801
Attention: Corporate Trust Trustee Administration
- 3. Effective. This Certificate of Trust shall be effective immediately upon filing in the Office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned being all of the trustees of the Trust, have duly executed this Certificate of Trust as of the day and year first above written.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION
as Delaware Trustee

By: /s/ Edward L. Truitt, Jr.

Name: Edward L. Truitt, Jr.

Title: Vice President

ADMINISTRATIVE TRUSTEE

 /s/ Michael L. Cox

 Michael L. Cox

ADMINISTRATIVE TRUSTEE

 /s/ Larry R. Helms

 Larry R. Helms, Esq.

ADMINISTRATIVE TRUSTEE

 /s/ Mark K. Hardwick

 Mark K. Hardwick

FIRST MERCHANTS CAPITAL TRUST II
TRUST AGREEMENT

This TRUST AGREEMENT, dated as of December 12, 2001 (this "Trust Agreement"), among (i) First Merchants Corporation, an Indiana corporation (the "Depositor"), (ii) First Union Trust Company, National Association, as trustee, and (iii) Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each an individual, as trustees (each of such trustees in (ii) and (iii) a "Trustee" and collectively, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby (the "Trust") shall be known as "First Merchants Capital Trust II" in which name the Trustees, or the Depositor to the extent provided herein, may engage in the transactions contemplated hereby, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10.00. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801, et seq. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

3. The Depositor and the Trustees will enter into an amended and restated Trust Agreement, satisfactory to each such party and substantially in the form included as an exhibit to the 1933 Act Registration Statement (as defined below), to provide for the contemplated operation of the Trust created hereby and the issuance of the Preferred Securities and Common Securities referred to therein. Prior to the execution and delivery of such amended and restated Trust Agreement, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery of any licenses, consents or approvals required by applicable law or otherwise.

4. The Depositor and the Trustees hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to the 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, (the "1933 Act") of the Preferred Securities of the Trust (including any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the 1933 Act), and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments

thereto) relating to the registration of the Preferred Securities of the Trust under the Securities Exchange Act of 1934, as amended; (ii) to file with Nasdaq or a national stock exchange (each, an "Exchange") and execute on behalf of the Trust one or more listing applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on any of the Exchanges; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or blue sky laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable; and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Preferred Securities, among the Trust, the Depositor and the Underwriter named therein, substantially in the form included as an exhibit to the 1933 Act Registration Statement. In the event that any filing referred to in clauses (i), (ii) and (iii) above is required by the rules and regulations of the Commission, an Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by one or more of the Trustees, each of the Trustees, in its, her or his capacity as a Trustee of the Trust, is hereby authorized and, to the extent so required, directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that First Union Trust Company, National Association in its capacity as a Trustee of the Trust shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws. In connection with the filings referred to above, the Depositor and Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each as Trustees and not in their individual capacities, hereby constitute and appoint Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, and each of them, as its true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or such Trustee or in the Depositor's or such

Trustees' name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, the Exchange and administrators of the state securities or blue sky laws, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor or such Trustee might or could to in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Trust Agreement may be executed in one or more counterparts.

6. The number of Trustees initially shall be four and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be 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 and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. The Trustees may resign upon 30 days' prior notice to the Depositor.

7. This Trust Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws of principles).

8. The Trustees (the "Fiduciary Indemnified Persons") shall not be liable, responsible or accountable in damages or otherwise to the Trust, the Depositor, the Trustees or any holder of the Trust's securities (the Trust, the Depositor and any holder of the Trust's securities being a "Covered Person") for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Fiduciary Indemnified Persons in good faith on behalf of the Trust and in a manner the Fiduciary Indemnified Persons reasonably believed to be within the scope of authority conferred on the Fiduciary Indemnified Persons by this Trust Agreement or by law, except that the Fiduciary Indemnified Persons shall be liable for any such loss, damage or claim incurred by reason of the Fiduciary Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

The Fiduciary Indemnified Persons 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 Fiduciary Indemnified Persons 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 Trust's securities might properly be paid.

9. The Depositor agrees, to the fullest extent permitted by applicable law,

(a) to indemnify and hold harmless each Fiduciary Indemnified Person, or any of its officers, directors, shareholders, employees, representatives or agents, from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by the Fiduciary Indemnified Persons by reason of the creation, operation or termination of the Trust in a manner the Fiduciary Indemnified Persons reasonably believed to be within the scope of authority conferred on the Fiduciary Indemnified Persons by this Trust Agreement, except that no Fiduciary Indemnified Persons shall be entitled to be indemnified in respect of any loss, damage or claim incurred by the Fiduciary Indemnified Persons by reason of gross negligence or willful misconduct with respect to such acts or omissions; and

(b) to advance expenses (including legal fees) incurred by a Fiduciary Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, prior to the final disposition of such claim, demand, action, suit or proceeding, upon

receipt by the Trust of an undertaking by or on behalf of such Fiduciary Indemnified Persons to repay such amount if it shall be determined that such Fiduciary Indemnified Person is not entitled to be indemnified as authorized in the preceding subsection.

10. The provisions of Section 9 shall survive the termination of this Trust Agreement or the earlier resignation or removal of the Fiduciary Indemnified Persons.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed as of the day and year first above written.

FIRST MERCHANTS CORPORATION,
as Depositor

By: /s/ Michael L. Cox

Name: Michael L. Cox

Title: President & CEO

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Edward L. Truitt, Jr.

Name: Edward L. Truitt, Jr.

Title: Vice President

/s/ Michael L. Cox , as Trustee

Michael L. Cox

/s/ Larry R. Helms , as Trustee

Larry R. Helms, Esq.

/s/ Mark K. Hardwick , as Trustee

Mark K. Hardwick

CERTIFICATE OF TRUST

OF

FIRST MERCHANTS CAPITAL TRUST III

This Certificate of Trust is being executed as of December 12, 2001 for the purposes of organizing a business trust pursuant to the Delaware Business Trust Act, 12 Del. C.ss.ss.3801 et seq. (the "Act").

The undersigned hereby certifies as follows:

- 1. Name. The name of the business trust is "First Merchants Capital Trust III" (the "Trust").
- 2. Delaware Trustee. The name and business address of the Delaware trustee of the Trust meeting the requirements of Section 3807 of the Act are as follows:

First Union Trust Company, National Association
One Rodney Square
920 King Street
Suite 102
Wilmington, Delaware 19801
Attention: Corporate Trust Trustee Administration
- 3. Effective. This Certificate of Trust shall be effective immediately upon filing in the Office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned being all of the trustees of the Trust, have duly executed this Certificate of Trust as of the day and year first above written.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION
as Delaware Trustee

By: /s/ Edward L. Truitt, Jr.

Name: Edward L. Truitt, Jr.

Title: Vice President

ADMINISTRATIVE TRUSTEE

/s/ Michael L. Cox

Michael L. Cox

ADMINISTRATIVE TRUSTEE

/s/ Larry R. Helms

Larry R. Helms, Esq.

ADMINISTRATIVE TRUSTEE

/s/ Mark K. Hardwick

Mark K. Hardwick

FIRST MERCHANTS CAPITAL TRUST III
TRUST AGREEMENT

This TRUST AGREEMENT, dated as of December 12, 2001 (this "Trust Agreement"), among (i) First Merchants Corporation, an Indiana corporation (the "Depositor"), (ii) First Union Trust Company, National Association, as trustee, and (iii) Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each an individual, as trustees (each of such trustees in (ii) and (iii) a "Trustee" and collectively, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby (the "Trust") shall be known as "First Merchants Capital Trust III" in which name the Trustees, or the Depositor to the extent provided herein, may engage in the transactions contemplated hereby, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10.00. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801, et seq. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

3. The Depositor and the Trustees will enter into an amended and restated Trust Agreement, satisfactory to each such party and substantially in the form included as an exhibit to the 1933 Act Registration Statement (as defined below), to provide for the contemplated operation of the Trust created hereby and the issuance of the Preferred Securities and Common Securities referred to therein. Prior to the execution and delivery of such amended and restated Trust Agreement, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery of any licenses, consents or approvals required by applicable law or otherwise.

4. The Depositor and the Trustees hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to the 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, (the "1933 Act") of the Preferred Securities of the Trust (including any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the 1933 Act), and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective

amendments thereto) relating to the registration of the Preferred Securities of the Trust under the Securities Exchange Act of 1934, as amended; (ii) to file with Nasdaq or a national stock exchange (each, an "Exchange") and execute on behalf of the Trust one or more listing applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on any of the Exchanges; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or blue sky laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable; and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Preferred Securities, among the Trust, the Depositor and the Underwriter named therein, substantially in the form included as an exhibit to the 1933 Act Registration Statement. In the event that any filing referred to in clauses (i), (ii) and (iii) above is required by the rules and regulations of the Commission, an Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by one or more of the Trustees, each of the Trustees, in its, her or his capacity as a Trustee of the Trust, is hereby authorized and, to the extent so required, directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that First Union Trust Company, National Association in its capacity as a Trustee of the Trust shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws. In connection with the filings referred to above, the Depositor and Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each as Trustees and not in their individual capacities, hereby constitute and appoint Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, and each of them, as its true and lawful attorneys-in-fact and agents, with full power of substitution and

resubstitution, for the Depositor or such Trustee or in the Depositor's or such Trustees' name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, the Exchange and administrators of the state securities or blue sky laws, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor or such Trustee might or could to in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Trust Agreement may be executed in one or more counterparts.

6. The number of Trustees initially shall be four and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be 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 and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or

remove without cause any Trustee at any time. The Trustees may resign upon 30 days' prior notice to the Depositor.

7. This Trust Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws of principles).

8. The Trustees (the "Fiduciary Indemnified Persons") shall not be liable, responsible or accountable in damages or otherwise to the Trust, the Depositor, the Trustees or any holder of the Trust's securities (the Trust, the Depositor and any holder of the Trust's securities being a "Covered Person") for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Fiduciary Indemnified Persons in good faith on behalf of the Trust and in a manner the Fiduciary Indemnified Persons reasonably believed to be within the scope of authority conferred on the Fiduciary Indemnified Persons by this Trust Agreement or by law, except that the Fiduciary Indemnified Persons shall be liable for any such loss, damage or claim incurred by reason of the Fiduciary Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

The Fiduciary Indemnified Persons 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 Fiduciary Indemnified Persons 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 Trust's securities might properly be paid.

9. The Depositor agrees, to the fullest extent permitted by applicable law,

(a) to indemnify and hold harmless each Fiduciary Indemnified Person, or any of its officers, directors, shareholders, employees, representatives or agents, from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by the Fiduciary Indemnified Persons by reason of the creation, operation or termination of the Trust in a manner the Fiduciary Indemnified Persons reasonably believed to be within the scope of authority conferred on the Fiduciary Indemnified Persons by this Trust Agreement, except that no Fiduciary Indemnified Persons shall be entitled to be indemnified in respect of any loss, damage or claim incurred by the Fiduciary Indemnified Persons by reason of gross negligence or willful misconduct with respect to such acts or omissions; and

(b) to advance expenses (including legal fees) incurred by a Fiduciary Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, prior to the final disposition of such claim, demand, action, suit or proceeding, upon receipt by the Trust of an undertaking by or on behalf of such Fiduciary Indemnified Persons to repay such amount if it shall be determined that such Fiduciary Indemnified Person is not entitled to be indemnified as authorized in the preceding subsection.

10. The provisions of Section 9 shall survive the termination of this Trust Agreement or the earlier resignation or removal of the Fiduciary Indemnified Persons.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed as of the day and year first above written.

FIRST MERCHANTS CORPORATION,
as Depositor

By: /s/ Michael L. Cox

Name: Michael L. Cox

Title: President & CEO

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Edward L. Truitt, Jr.

Name: Edward L. Truitt, Jr.

Title: Vice President

/s/ Michael L. Cox , as Trustee

Michael L. Cox

/s/ Larry R. Helms , as Trustee

Larry R. Helms, Esq.

/s/ Mark K. Hardwick , as Trustee

Mark K. Hardwick

PREFERRED SECURITIES GUARANTEE AGREEMENT

by and between

FIRST MERCHANTS CORPORATION

and

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION

Dated as of [_____]

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CROSS REFERENCE TABLE

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
310(a)	4.1(a)
310(b)	4.1(c), 2.8
310(c)	Not Applicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Not Applicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Not Applicable
314(c)	2.5
314(d)	Not Applicable
314(e)	1.1, 2.5, 3.2
314(f)	2.1, 3.2
315(a)	3.1(d)
315(b)	2.7
315(c)	3.1
315(d)	3.1(d)
316(a)	1.1, 2.6, 5.4
316(b)	5.3
317(a)	3.1
317(b)	Not Applicable
318(a)	2.1(a)
318(b)	2.1
318(c)	2.1(b)

Note: This Cross-Reference Table does not constitute part of this Agreement and shall not affect the interpretation of any of its terms or provisions.

PREFERRED SECURITIES GUARANTEE AGREEMENT

This PREFERRED SECURITIES GUARANTEE AGREEMENT (this "Preferred Securities Guarantee"), dated as of [_____], is executed and delivered by FIRST MERCHANTS CORPORATION, an Indiana corporation (the "Guarantor"), and FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of First Merchants Capital Trust [I/II/III], a Delaware statutory business trust (the "Trust").

RECITALS

WHEREAS, pursuant to an Amended and Restated Trust Agreement (the "Trust Agreement"), dated as of [_____], among the trustees of the Trust named therein, the Guarantor, as Depositor, and the holders from time to time of undivided beneficial interests in the assets of the Trust, the Trust is issuing on the date hereof up to [_____] preferred securities, having an aggregate Liquidation Amount of up to \$[_____] designated the [_____] % Cumulative Trust 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 Guarantee, to pay to the Holders of the Preferred Securities the Guarantee Payments (as defined herein) and 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 agrees shall benefit the Guarantor, the Guarantor executes and delivers this Preferred Securities Guarantee for the benefit of the Holders.

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation.

In this Preferred Securities Guarantee, unless the context otherwise requires:

- (a) capitalized terms used in this Preferred Securities Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) terms defined in the Trust Agreement as at the date of execution of this Preferred Securities Guarantee have the same meaning when used in this Preferred Securities Guarantee, unless otherwise defined in this Preferred Securities Guarantee;

- (c) a term defined anywhere in this Preferred Securities Guarantee has the same meaning throughout;
- (d) all references to "the Preferred Securities Guarantee" or "this Preferred Securities Guarantee" are to this Preferred Securities Guarantee as modified, supplemented or amended from time to time;
- (e) all references in this Preferred Securities Guarantee to Articles and Sections are to Articles and Sections of this Preferred Securities Guarantee, unless otherwise specified;
- (f) a term defined in the Trust Indenture Act has the same meaning when used in this Preferred Securities Guarantee, unless otherwise defined in this Preferred Securities Guarantee or unless the context otherwise requires; and
- (g) a reference to the singular includes the plural and vice versa.

"Affiliate" has the same meaning as given to that term in Rule 405 of the Securities Act of 1933, as amended, or any successor rule thereunder.

"Business Day" means any day other than a Saturday, Sunday, a day on which federal or state banking institutions in New York, New York are authorized or required by law, executive order or regulation to close or a day on which the Corporate Trust Office of the Guarantee Trustee is closed for business.

"Corporate Trust Office" means the office of the Guarantee Trustee at which the corporate trust business of the Guarantee Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Agreement is located at One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration..

"Covered Person" means any Holder or beneficial owner of Preferred Securities.

"Debentures" means the [___]% Junior Subordinated Debentures due [_____], the Debenture Issuer held by the Property Trustee of the Trust.

"Debenture Issuer" means First Merchants Corporation, issuer of the Debentures under the Indenture.

"Event of Default" means a default by the Guarantor on any of its payments or other obligations under this Preferred Securities Guarantee.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by the Trust: (i) any accrued

and unpaid Distributions that are required to be paid on such Preferred Securities, to the extent the Trust shall have funds available therefor, (ii) the redemption price, including all accrued and unpaid Distributions to the date of redemption (the "Redemption Price"), to the extent the Trust has funds available therefor, with respect to any Preferred Securities called for redemption by the Trust, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Trust (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 accrued and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Trust shall have funds available therefor (the "Liquidation Distribution"), and (b) the amount of assets of the Trust remaining available for distribution to Holders in liquidation of the Trust.

"Guarantee Trustee" means First Union Trust Company, National Association, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Preferred Securities Guarantee and thereafter means each such Successor Guarantee Trustee.

"Guarantor" means First Merchants Corporation, an Indiana corporation.

"Holder" shall mean any holder, as registered on the books and records of the Trust, 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, the Guarantee Trustee or any of their respective Affiliates.

"Indemnified Person" means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, or any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Guarantee Trustee.

"Indenture" means the Indenture dated as of [_____], among the Debenture Issuer and First Union Trust Company, National Association, as trustee, and any indenture supplemental thereto pursuant to which the Debentures are to be issued to the Property Trustee of the Trust, including, without limitation, that certain First Supplemental Indenture dated as of [_____].

"Liquidation Amount" means the stated value of \$[___] per Preferred Security.

"Liquidation Distribution" has the meaning provided therefor in the definition of Guarantee Payments.

"Majority in Liquidation Amount of the Preferred Securities" means the holders of more than 50% of the Liquidation Amount of all of the Preferred Securities.

"Officers' Certificate" means, with respect to any Person, a certificate signed by two authorized officers of such Person, at least one of whom shall be the principal executive officer, principal financial officer, principal accounting officer, treasurer or any vice president of such

Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Preferred Securities Guarantee shall include:

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

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

"Preferred Securities" means the [___]% Cumulative Trust Preferred Securities representing undivided beneficial interests in the assets of the Trust which rank pari passu with Common Securities issued by the Trust; provided, however, that upon the occurrence of an Event of Default, the rights of holders of Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights of holders of Preferred Securities.

"Redemption Price" has the meaning provided therefor in the definition of Guarantee Payments.

"Responsible Officer" means, with respect to the Guarantee Trustee, any officer within the Corporate Trust Office of the Guarantee Trustee with direct responsibility for the administration of this Preferred Securities Guarantee, including any vice-president, any assistant vice-president, any assistant secretary or other officer or assistant officer of the Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

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

ARTICLE II

TRUST INDENTURE ACT

2.1 Trust Indenture Act; Application.

- (a) This Preferred Securities Guarantee is subject to the provisions of the Trust Indenture Act that are required to be part of this Preferred Securities Guarantee and shall, to the extent applicable, be governed by such provisions.
- (b) If and to the extent that any provision of this Preferred Securities Guarantee limits, qualifies or conflicts with the duties imposed by Section 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

2.2 Lists of Holders of Securities.

- (a) In the event the Guarantee Trustee is not also acting in the capacity of the Property Trustee under the Trust Agreement, the Guarantor shall cause to be provided to the Guarantee Trustee a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Preferred Securities ("List of Holders") as of the date (i) within one Business Day after March 15, June 15, September 15 and December 15, and (ii) at any other time within 30 days of receipt by the Guarantor of a written request for a List of Holders as of a date no more than 15 days before such List of Holders is given to the Guarantee Trustee; provided, that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders caused to have been given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.
- (b) The Guarantee Trustee shall comply with its obligations under Sections 311(a), 311(b) and Section 312(b) of the Trust Indenture Act.

2.3 Reports by the Guarantee Trustee.

On or before July 31 of each year, commencing [_____] the Guarantee Trustee shall provide to the Holders of the Preferred Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

2.4 Periodic Reports to Guarantee Trustee.

The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314 (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

2.5 Evidence of Compliance with Conditions Precedent.

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Preferred Securities Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

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 Guarantee, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

2.7 Event of Default; Notice.

- (a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Preferred Securities, notices of all Events of Default actually known to a Responsible Officer of the Guarantee Trustee, unless such defaults have been cured before the giving of such notice; provided, that, except in the case of a default by Guarantor on any of its payment obligations, the Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Preferred Securities.
- (b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or of which a Responsible Officer of the Guarantee Trustee charged with the administration of the Trust Agreement shall have obtained actual knowledge.

2.8 Conflicting Interests.

The Trust Agreement shall be deemed to be specifically described in this Preferred Securities Guarantee 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 GUARANTEE TRUSTEE

3.1 Powers and Duties of the Guarantee Trustee.

- (a) This Preferred Securities Guarantee shall be held by the Guarantee Trustee for the benefit of the Holders of the Preferred Securities, and the Guarantee Trustee shall not transfer this Preferred Securities Guarantee to any Person except a Holder of Preferred Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.
- (b) If an Event of Default actually known to a Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Preferred Securities Guarantee for the benefit of the Holders of the Preferred Securities.
- (c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Preferred Securities Guarantee, and no implied covenants shall be read into this Preferred Securities Guarantee against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Preferred Securities Guarantee, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

- (d) No provision of this Preferred Securities Guarantee shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:
- (i) prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:
 - (A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Preferred Securities Guarantee, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Preferred Securities Guarantee, and no implied covenants or obligations shall be read into this Preferred Securities Guarantee against the Guarantee Trustee; and
 - (B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Preferred Securities Guarantee; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Preferred Securities Guarantee;
 - (ii) the Guarantee Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Guarantee Trustee, unless it shall be proved that the Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;
 - (iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Preferred Securities Guarantee; and

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

3.2 Certain Rights of Guarantee Trustee.

(a) Subject to the provisions of Section 3.1:

- (i) the Guarantee Trustee may conclusively rely, and shall be fully protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document 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 Guarantee shall be sufficiently evidenced by an Officers' Certificate;
- (iii) whenever, in the administration of this Preferred Securities Guarantee, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor;
- (iv) the Guarantee 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 Guarantee Trustee may consult with counsel, and the written 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 Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Preferred Securities Guarantee from any court of competent jurisdiction;

- (vi) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Preferred Securities Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity, reasonably satisfactory to the Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; provided that, nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Guarantee 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 Guarantee;
- (vii) the Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;
- (viii) the Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;
- (ix) no third party shall be required to inquire as to the authority of the Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Preferred Securities Guarantee, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action; and
- (x) whenever in the administration of this Preferred Securities Guarantee the Guarantee Trustee shall deem it desirable to receive

instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request 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 protected in conclusively relying on or acting in accordance with such instructions.

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

3.3 Not Responsible for Recitals or Issuance of Guarantee.

The Recitals contained in this Guarantee shall be taken as the statements of the Guarantor, and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representation as to the validity or sufficiency of this Preferred Securities Guarantee.

ARTICLE IV

GUARANTEE TRUSTEE

4.1 Guarantee Trustee; Eligibility.

- (a) There shall at all times be a Guarantee Trustee which shall:
- (i) not be an Affiliate of the Guarantor; and
 - (ii) be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as 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 \$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 Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).
- (c) If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

4.2 Appointment, Removal and Resignation of Guarantee Trustee.

- (a) Subject to Section 4.2(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.
- (b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.
- (c) The Guarantee Trustee appointed to office shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.
- (d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.
- (e) No Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Guarantee Trustee.

- (f) Upon termination of this Preferred Securities Guarantee or removal or resignation of the Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Guarantee Trustee all fees and expenses accrued to the date of such termination, removal or resignation.

ARTICLE V

GUARANTEE

5.1 Guarantee.

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders.

5.2 Waiver of Notice and Demand.

The Guarantor hereby waives notice of acceptance of this Preferred Securities Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

5.3 Obligations not Affected.

The obligations, covenants, agreements and duties of the Guarantor under this Preferred Securities Guarantee shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Trust;
- (b) the extension of time for the payment by the Trust 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 or any extension of the maturity date of 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 Trust 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 Trust or any of the assets of the Trust;
- (e) any invalidity of, or defect or deficiency in, the Preferred Securities;
- (f) any failure or omission to receive any regulatory approval or consent required in connection with the Preferred Securities (or the common equity securities issued by the Trust), including the failure to receive any approval of the Board of Governors of the Federal Reserve System required for the redemption of the Preferred Securities;
- (g) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or
- (h) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

5.4 Rights of Holders.

- (a) Subject to Section 5.4(b), the Holders of a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting of any proceeding for any remedy available to the Guarantee Trustee in respect of this Preferred Securities Guarantee or exercising any trust or power conferred upon the Guarantee Trustee under this Preferred Securities Guarantee.
- (b) Any Holder of Preferred Securities may institute and prosecute a legal proceeding directly against the Guarantor to enforce its rights under this

Preferred Securities Guarantee, without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other Person.

5.5 Guarantee of Payment.

This Preferred Securities Guarantee creates a guarantee of payment and not of collection.

5.6 Subrogation.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Preferred Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this Preferred Securities Guarantee; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Preferred Securities Guarantee, if, at the time of any such payment, any amounts are due and unpaid under this Preferred Securities Guarantee. 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.

5.7 Independent Obligations.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the Preferred Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Preferred Securities Guarantee notwithstanding the occurrence of any event referred to in subsections (a) through (h), inclusive, of Section 5.3 hereof.

ARTICLE VI

LIMITATION OF TRANSACTIONS; SUBORDINATION

6.1 Limitation of Transactions.

So long as any Preferred Securities remain outstanding, if there shall have occurred an Event of Default under this Preferred Securities Guarantee, an event of default under the Trust Agreement or during an Extended Interest Payment Period (as defined in the Indenture), then the Guarantor shall not (i) declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than as a result of a reclassification of its capital stock for another class of its capital stock), (ii) make any payment of interest or principal on or repay, repurchase or redeem any debt securities issued by the Guarantor which rank pari passu with or junior to the Debentures (iii) make any guarantee payments with respect to any of the foregoing (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 non-cash dividend in connection with the implementation of a stockholders' 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 this Preferred Securities Guarantee, (d) the purchase of fractional shares resulting from a reclassification 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 of common stock related to the issuance of common stock or rights under any of the Guarantor's benefit plans for its directors, officers or employees or any of the Guarantor's dividend reinvestment plans).

6.2 Ranking.

This Preferred Securities Guarantee will constitute an unsecured obligation of the Guarantor and will rank subordinate and junior in right of payment to all Senior Debt, Subordinated Debt and Additional Senior Obligations, of the Guarantor (as defined in the Indenture), to the extent and in the manner set forth in the Indenture, and the applicable provisions of the Indenture will apply, in all relevant respects, to the obligations of the Guarantor hereunder.

ARTICLE VII

TERMINATION

7.1 Termination.

This Preferred Securities Guarantee shall terminate upon (i) full payment of the Redemption Price of all Preferred Securities, (ii) upon full payment of the amounts payable in accordance with the Trust Agreement upon liquidation of the Trust, or (iii) upon distribution of the Debentures to the Holders of the Preferred Securities. Notwithstanding the foregoing, this Preferred Securities Guarantee shall continue to be effective or shall 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 Guarantee.

ARTICLE VIII

INDEMNIFICATION

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 Guarantee and in a manner that such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Preferred Securities

Guarantee or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence, bad faith 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.

8.2 Indemnification.

The Guarantor agrees to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct 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 Guarantee.

ARTICLE IX

MISCELLANEOUS

9.1 Successors and Assigns.

All guarantees and agreements contained in this Preferred Securities Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding.

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 Guarantee may only be amended with the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred Securities. The provisions of Article VI of the Trust Agreement with respect to meetings of Holders of the Preferred Securities apply to the giving of such approval.

9.3 Notices.

All notices provided for in this Preferred Securities Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

- (a) If given to the Guarantee Trustee, at the Guarantee Trustee's mailing address set forth below (or such other address as the Guarantee Trustee may give notice of to the Holders of the Preferred Securities):

First Union Trust Company, National Association
One Rodney Square
920 King Street, Suite 102
Wilmington, DE 19801
Fax: (302) 888-7544
Attention: Corporate Trust Trustee Administration

- (b) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Holders of the Preferred Securities):

First Merchants Corporation
200 East Jackson Street
Post Office Box 792
Muncie, Indiana 47308
Fax: (765) 741-7283
Attention: Larry R. Helms, Esq.,
Senior Vice President & General Counsel

- (c) If given to any Holder of Preferred Securities, at the address set forth on the books and records of the Trust.

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

9.4 Benefit.

This Preferred Securities Guarantee is solely for the benefit of the Holders of the Preferred Securities and, subject to Section 3.1(a), is not separately transferable from the Preferred Securities.

9.5 Governing Law.

THIS PREFERRED SECURITIES GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF INDIANA.

[Signatures on next page.]

IN WITNESS WHEREOF, this Preferred Securities Guarantee is executed as of the day and year first above written.

FIRST MERCHANTS CORPORATION,
as Guarantor

By: -----
Name: -----
Title: -----

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Guarantee Trustee

By: -----
Name: -----
Title: -----

FIRST MERCHANTS CAPITAL TRUST [I/II/III]
 AMENDED AND RESTATED
 TRUST AGREEMENT

among

First Merchants Corporation,
 as Depositor,

First Union Trust Company, National Association,
 as Property Trustee and Delaware Trustee,

and

THE ADMINISTRATIVE TRUSTEES NAMED HEREIN

Dated as of [_____]

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EXHIBITS

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Exhibit B	Form of Common Securities Certificate
Exhibit C	Form of Expense Agreement
Exhibit D	Form of Preferred Securities Certificate
Exhibit E	Form of Preferred Securities Certificate Authentication
Exhibit F	Certificate Depositary Agreement

CROSS-REFERENCE TABLE

Section of Trust Indenture Act of 1939, as amended	Amended and Restated Declaration of Trust
310(a)(1)	807
310(a)(2)	807
310(a)(3)	807
310(a)(4)	207(a)(ii)
310(b)	808
311(a)	813
311(b)	813
312(a)	507
312(b)	507
312(c)	507
313(a)	814(a)
313(a)(4)	814(b)
313(b)	814(b)
313(c)	1008
313(d)	814(c)
314(a)	815
314(b)	Not Applicable
314(c)(1)	816
314(c)(2)	816
314(c)(3)	Not Applicable
314(d)	Not Applicable
314(e)	101, 816
315(a)	801(a), 803(a)
315(b)	802, 1008
315(c)	801(a)
315(d)	801, 803
316(a)(2)	Not Applicable
316(b)	Not Applicable
316(c)	607
317(a)(1)	Not Applicable
317(a)(2)	Not Applicable
317(b)	509
318(a)	1010

Note: This Cross-Reference Table does not constitute part of this Agreement and shall not affect the interpretation of any of its terms or provisions.

AMENDED AND RESTATED TRUST AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT, dated as of [_____], among (i) FIRST MERCHANTS CORPORATION, an Indiana corporation (including any successors or assigns, the "Depositor"), (ii) FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, as property trustee and Delaware trustee (sometimes referred to herein as the "Property Trustee," and/or the "Delaware Trustee" and sometimes referred to in its separate corporate capacity and not in its capacity as Property Trustee or Delaware Trustee as the "Bank" and/or the "Delaware Bank") and (iii) MICHAEL L. COX, an individual, LARRY R. HELMS, ESQ., an individual, and MARK K. HARDWICK, an individual, each of whose address is c/o Company (each an "Administrative Trustee" and collectively the "Administrative Trustees") (the Property Trustee, the Delaware Trustee and the Administrative Trustees referred to collectively as the "Trustees"), and (v) the several Holders (as hereinafter defined).

RECITALS

WHEREAS, the Depositor, the Delaware Trustee, and Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, each as an Administrative Trustee, have heretofore duly declared and established a business trust pursuant to the Delaware Business Trust Act by entering into that certain Trust Agreement dated as of December 12, 2001 (the "Original Trust Agreement"), and by the execution and filing by the Delaware Trustee and the Administrative Trustees with the Secretary of State of the State of Delaware of the Certificate of Trust, filed on December 12, 2001, the form of which is attached as Exhibit A; and

WHEREAS, the Depositor, the Delaware Trustee, the Property Trustee and the Administrative Trustees desire to amend and restate the Original Trust Agreement in its entirety as set forth herein to provide for, among other things, (i) the issuance of the Common Securities (as defined herein) by the Trust (as defined herein) to the Depositor; (ii) the issuance and sale of the Preferred Securities (as defined herein) by the Trust pursuant to the Underwriting Agreement (as defined herein); (iii) the acquisition by the Trust from the Depositor of all of the right, title and interest in the Debentures (as defined herein); and (iv) the appointment of the Trustees;

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party, for the benefit of the other parties and for the benefit of the Securityholders (as defined herein), hereby amends and restates the Original Trust Agreement in its entirety and agrees as follows:

ARTICLE I

DEFINED TERMS

1.1 Definitions.

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

- (a) the terms defined in this Article I have the meanings assigned to them in this Article I and include the plural as well as the singular;
- (b) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Trust Agreement; and
- (d) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

"Act" has the meaning specified in Section 6.8.

"Additional Amount" means, with respect to Trust Securities of a given Liquidation Amount and/or a given period, the amount equal to accrued interest, including compound interest, in arrears and paid by the Depositor on a Like Amount of Debentures for such period.

"Additional Interest" has the meaning specified in Section 1.1 of the First Supplemental Indenture.

"Administrative Trustee" means each of Michael L. Cox, Larry R. Helms, Esq. and Mark K. Hardwick, solely in his or her capacity as Administrative Trustee of the Trust formed and continued hereunder and not in his or her individual capacity, or such Administrative Trustee's successor in interest in such capacity, or any successor trustee appointed as herein provided.

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

"Authenticating Agent" means an authenticating agent with respect to the Preferred Securities appointed by the Property Trustee pursuant to Section 5.3.

"Bank" has the meaning specified in the Preamble to this Trust Agreement.

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

- (a) the entry of a decree or order by a court having jurisdiction in the premises adjudging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking liquidation or reorganization of or in respect of such

Person under the United States Bankruptcy Code of 1978, as amended, or any other similar applicable federal or state law, and the continuance of any such decree or order unvacated and unstayed for a period of 90 days; or the commencement of an involuntary case under the United States Bankruptcy Code of 1978, as amended, in respect of such Person, which shall continue undismissed for a period of 90 days or entry of an order for relief in such case; or the entry of a decree or order of a court having jurisdiction in the premises for the appointment on the ground of insolvency or bankruptcy of a receiver, custodian, liquidator, trustee or assignee in bankruptcy or insolvency of such Person or of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force unvacated and unstayed for a period of 90 days; or

- (b) the institution by such Person of proceedings to be adjudicated a voluntary bankrupt, or the consent by such Person to the filing of a bankruptcy proceeding against it, or the filing by such Person of a petition or answer or consent seeking liquidation or reorganization under the United States Bankruptcy Code of 1978, as amended, or other similar applicable federal or state law, or the consent by such Person to the filing of any such petition or to the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of such Person or of its property, or shall make a general assignment for the benefit of creditors.

"Bankruptcy Laws" has the meaning specified in Section 10.9.

"Board Resolution" means a copy of a resolution certified by the Secretary of the Depositor to have been duly adopted by the Depositor's Board of Directors, or such committee of the Board of Directors or officers of the Depositor to which authority to act on behalf of the Board of Directors has been delegated, and to be in full force and effect on the date of such certification, and delivered to the appropriate Trustee.

"Business Day" means a day other than a Saturday or Sunday, a day on which banking institutions in The City of New York are authorized or required by law, executive order or regulation to remain closed, or a day on which the Property Trustee's Corporate Trust Office or the Corporate Trust Office of the Debenture Trustee is closed for business.

"Certificate Depositary Agreement" means the agreement among Depositor, Trust and DTC, as the initial Clearing Agency, dated as of the Closing Date, substantially in the form attached as Exhibit F as the same may be amended and supplemented from time to time.

"Certificate of Trust" means the certificate of trust filed with the Secretary of State of the State of Delaware with respect to the Trust, as amended or restated from time to time.

"Change in 1940 Act Law" shall have the meaning set forth in the definition of "Investment Company Event."

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended. DTC shall be the initial Clearing Agency.

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

"Closing Date" means the date of execution and delivery of this Trust Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

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

"Common Security" means an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount of \$[_____] and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

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

"Corporate Trust Office" means the office at which, at any particular time, the corporate trust business of the Property Trustee or the Debenture Trustee, as the case may be, shall be principally administered, which office at the date hereof, in each such case, is located at One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration.

"Debenture Event of Default" means an "Event of Default" as defined in Section 5.1 of the Indenture.

"Debenture Redemption Date" means, with respect to any Debentures to be redeemed under the Indenture, the date fixed for redemption under the Indenture.

"Debenture Tax Event" means a "Tax Event" as specified in Section 1.1 of the First Supplemental Indenture.

"Debenture Trustee" means First Union Trust Company, National Association and any successor thereto, as trustee under the Indenture.

"Debentures" means up to \$[_____] principal amount of the Depositor's [__]% Junior Subordinated Debentures due [____] issued pursuant to the Indenture.

"Definitive Preferred Securities Certificates" means Preferred Securities Certificates issued in certified, fully registered form as provided in Section 5.4.

"Delaware Bank" has the meaning specified in the Preamble to this Trust Agreement.

"Delaware Business Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Delaware Code Sections 3801 et seq. as it may be amended from time to time.

"Delaware Trustee" means the commercial bank or trust company identified as the "Delaware Trustee" in the Preamble to this Trust Agreement solely in its capacity as Delaware Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as herein provided.

"Depository" means DTC or any successor thereto.

"Depositor" has the meaning specified in the Preamble to this Trust Agreement.

"Distribution Date" has the meaning specified in Section 4.1(a).

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

"DTC" means The Depository Trust Company.

"Event of Default" means any one of the following events (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) the occurrence of a Debenture Event of Default; or
- (b) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days; or
- (c) default by the Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable; or
- (d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in this Trust Agreement (other than a covenant or warranty a default in the performance of which or the breach of which is dealt with in clause (b) or (c), above) and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting Trustee or Trustees by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Preferred 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
- (e) the occurrence of a Bankruptcy Event with respect to the Property Trustee and the failure by the Depositor to appoint a successor Property Trustee within 60 days thereof.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Expense Agreement" means the Agreement as to Expenses and Liabilities between the Depositor and the Trust, substantially in the form attached as Exhibit C, as amended from time to time.

"Expiration Date" has the meaning specified in Section 9.1.

"Extended Interest Payment Period" has the meaning specified in Section 4.1 of the First Supplemental Indenture.

"Global Preferred Securities Certificate" means a Preferred Securities Certificate evidencing ownership of Global Preferred Securities.

"Global Preferred Security" means a Preferred Security, the ownership and transfer of which shall be made through book entries by a Clearing Agency as described herein.

"Guarantee" means the Preferred Securities Guarantee Agreement executed and delivered by the Depositor and First Union Trust Company, National Association, as trustee, contemporaneously with the execution and delivery of this Trust Agreement, for the benefit of the holders of the Preferred Securities, as amended from time to time.

"Indenture" means the Indenture, dated as of [_____], between the Depositor and the Debenture Trustee, as trustee, as amended by that certain First Supplemental Indenture (the "First Supplemental Indenture"), dated as of [_____] as hereafter may be amended or supplemented from time to time, pursuant to which the Debentures are issued.

"Investment Company Act," means the Investment Company Act of 1940, as amended, as in effect at the date of execution of this instrument.

"Investment Company Event" means the receipt by the Trust and the Depositor of an Opinion of Counsel, rendered by a law firm having a recognized national tax and securities law practice, 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"), the Trust is or shall be considered an "investment company" that is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities under this Trust Agreement, provided, however, that the Depositor or the Trust shall have requested and received such an Opinion of Counsel with regard to such matters within a reasonable period of time after the Depositor or the Trust shall have become aware of the possible occurrence of any such event.

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

"Like Amount" means (a) with respect to a redemption of Trust Securities, Trust Securities having an aggregate Liquidation Amount equal to the aggregate principal amount of Debentures to

be contemporaneously redeemed in accordance with the Indenture and the proceeds of which shall be used to pay the Redemption Price of such Trust Securities; and (b) with respect to a distribution of Debentures to Holders of Trust Securities in connection with a termination or liquidation of the Trust, Debentures having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Debentures are distributed. Each Debenture distributed pursuant to clause (b) above shall carry with it accrued interest in an amount equal to the accrued and unpaid interest then due on such Debentures.

"Liquidation Amount" means the stated amount of \$[_____] per Trust Security.

"Liquidation Date" means the date on which Debentures are to be distributed to Holders of Trust Securities in connection with a dissolution and liquidation of the Trust pursuant to Section 9.4(a).

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

"Officers' Certificate" means a certificate signed by the President or an Executive Vice President and by the Chief Financial Officer or the Treasurer or the Secretary, of the Depositor, and delivered to the appropriate Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 8.16 shall be the principal executive, financial or accounting officer of the Depositor. 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 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 Officers' Certificate;
- (c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"Opinion of Counsel" means an opinion in writing of independent, outside legal counsel for the Trust, the Property Trustee, the Delaware Trustee or the Depositor, who shall be reasonably acceptable to the Property Trustee.

"Original Trust Agreement" has the meaning specified in the Recitals to this Trust Agreement.

"Outstanding", when used with respect to Preferred Securities, means, as of the date of determination, all Preferred Securities theretofore executed and delivered under this Trust Agreement, except:

- (a) Preferred Securities theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;
- (b) Preferred Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent for the Holders of such Preferred Securities; provided that, if such Preferred Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Trust Agreement; and
- (c) Preferred Securities which have been paid or in exchange for or in lieu of which other Preferred Securities have been executed and delivered pursuant to Sections 5.4, 5.5 and 5.11; provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Preferred Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Preferred Securities owned by the Depositor, any Trustee or any Affiliate of the Depositor or any Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Preferred Securities that such Trustee knows to be so owned shall be so disregarded; and (b) the foregoing shall not apply at any time when all of the outstanding Preferred Securities are owned by the Depositor, one or more of the Trustees and/or any such Affiliate. Preferred Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Administrative Trustees the pledgee's right so to act with respect to such Preferred Securities and the pledgee is not the Depositor or any other Obligor upon the Preferred Securities or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Depositor or any Affiliate of the Depositor.

"Paying Agent" means any paying agent or co-paying agent appointed pursuant to Section 5.9 and shall initially be the Bank.

"Payment Account" means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee with the Bank in its trust department for the benefit of the Securityholders in which all amounts paid in respect of the Debentures shall be held and from which the Property Trustee shall make payments to the Securityholders in accordance with Sections 4.1 and 4.2.

"Person" means any individual, corporation, partnership, joint venture, trust, limited liability company or corporation, unincorporated organization or government or any agency or political subdivision thereof.

"Preferred Security" means an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount of \$[_____] and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

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

"Property Trustee" means the commercial bank or trust company identified as the "Property Trustee," in the Preamble to this Trust Agreement solely in its capacity as Property Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

"Redemption Date" means, with respect to any Trust Security to be redeemed, the date fixed for such redemption by or pursuant to this Trust Agreement; provided that each Debenture Redemption Date and the stated maturity of the Debentures shall be a Redemption Date for a Like Amount of Trust Securities.

"Redemption Price" means, with respect to any Trust Security, the Liquidation Amount of such Trust Security, plus accumulated and unpaid Distributions to the Redemption Date allocated on a pro rata basis (based on Liquidation Amounts) among the Trust Securities.

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

"Securities Register" and "Securities Registrar" have the respective meanings specified in Section 5.4.

"Securityholder" or "Holder" means a Person in whose name a Trust Security is or Trust Securities are registered in the Securities Register; any such Person is a beneficial owner within the meaning of the Delaware Business Trust Act.

"Trust" means the Delaware business trust created and continued hereby and identified on the cover page to this Trust Agreement.

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

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

"Trust Property" means (a) the Debentures; (b) any cash on deposit in, or owing to, the Payment Account; and (c) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Property Trustee pursuant to the trusts of this Trust Agreement.

"Trust Security" means any one of the Common Securities or the Preferred Securities.

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

"Trustees" means, collectively, the Property Trustee, the Delaware Trustee and the Administrative Trustees.

"Underwriting Agreement" means the Underwriting Agreement, dated as of [_____], among the Trust, the Depositor and the Underwriters named therein.

ARTICLE II

ESTABLISHMENT OF THE TRUST

2.1 Name.

The Trust continued hereby shall be known as "First Merchants Capital Trust [I/II/III]," as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Trust Securities and the other Trustees, in which name the Trustees may engage in the transactions contemplated hereby, make and execute contracts and other instruments on behalf of the Trust and sue and be sued.

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

The address of the Delaware Trustee in the State of Delaware is One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Securityholders and the Depositor. The principal executive office of the Trust is c/o First Merchants Corporation, 200 East Jackson Street, Post Office Box 792, Muncie, Indiana 47308, Attention: Larry R. Helms, Esq., Senior Vice President & General Counsel.

2.3 Initial Contribution of Trust Property; Organizational Expenses.

The Trustees acknowledge receipt in trust from the Depositor in connection with the Original Trust Agreement of the sum of \$[_____], which constituted the initial Trust Property. The Depositor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Depositor shall make no claim upon the Trust Property for the payment of such expenses.

2.4 Issuance of the Preferred Securities.

The Depositor and an Administrative Trustee, on behalf of the Trust and pursuant to the Original Trust Agreement, executed and delivered the Underwriting Agreement. Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver in accordance with the Underwriting Agreement, Preferred Securities Certificates, registered in the name of Persons entitled thereto in an aggregate amount of [_____] Preferred Securities having an aggregate Liquidation Amount of \$[_____] against receipt of the aggregate purchase price of

such Preferred Securities of \$[_____], which amount such Administrative Trustee shall promptly deliver to the Property Trustee. If the underwriters exercise their over-allotment option and there is an Option Closing Date (as such term is defined in the Underwriting Agreement), then an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver in accordance with the Underwriting Agreement, Preferred Securities Certificates, registered in the name of the Persons entitled thereto in an aggregate amount of up to [_____] Preferred Securities having an aggregate Liquidation Amount of up to \$[_____] against receipt of the aggregate purchase price of such Preferred Securities of up to \$[_____], which amount such Administrative Trustee shall promptly deliver to the Property Trustee.

2.5 Issuance of the Common Securities; Subscription and Purchase of Debentures.

- (a) Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver to the Depositor, Common Securities Certificates, registered in the name of the Depositor, in an aggregate amount of Common Securities having an aggregate Liquidation Amount of \$[_____] against payment by the Depositor of such amount. Contemporaneously therewith, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Depositor Debentures, registered in the name of the Property Trustee on behalf of the Trust and having an aggregate principal amount equal to \$[_____], and, in satisfaction of the purchase price for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor the sum of \$[_____].
- (b) If the underwriters exercise their over-allotment option and there is an Option Closing Date, then an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 5.2 and deliver to the Depositor, Common Securities Certificates, registered in the name of the Depositor, in an additional aggregate amount of Common Securities having an aggregate Liquidation Amount of up to \$[_____] against payment by the Depositor of such amount. Contemporaneously therewith, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Depositor, additional Debentures, registered in the name of the Trust and having an aggregate principal amount of up to \$[_____], and, in satisfaction of the purchase price of such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor up to \$[_____], such aggregate amount to be equal to the sum of the amounts received from the Depositor pursuant to Section 2.5(b) and from one of the Administrative Trustees pursuant to the last sentence of Section 2.4.

2.6 Declaration of Trust.

The exclusive purposes and functions of the Trust are (a) to issue and sell Trust Securities and use the proceeds from such sale to acquire the Debentures; and (b) to engage in those activities

necessary, advisable or incidental thereto. The Depositor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it shall hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Securityholders. The Administrative Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Property Trustee or the Administrative Trustees set forth herein. The Delaware Trustee shall be one of the Trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Business Trust Act.

2.7 Authorization to Enter into Certain Transactions.

- (a) The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in paragraph (b) of this Section 2.7 and Article VIII, and in accordance with the following provisions (i) and (ii), the Administrative Trustees shall have the authority to enter into all transactions and agreements determined by the Administrative Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Administrative Trustees under this Trust Agreement, and to perform all acts in furtherance thereof, including without limitation, the following:
- (i) As among the Trustees, each Administrative Trustee, acting singly or jointly, shall have the power and authority to act on behalf of the Trust with respect to the following matters:
- (A) the issuance and sale of the Trust Securities and the compliance with the Underwriting Agreement in connection therewith;
 - (B) to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, the Underwriting Agreement, the Expense Agreement and such other agreements or documents as may be necessary or desirable in connection with the purposes and function of the Trust;
 - (C) assisting in the registration of the Preferred Securities under the Securities Act of 1933, as amended, and under state securities or blue sky laws, and the qualification of this Trust Agreement as a trust indenture under the Trust Indenture Act;
 - (D) assisting in the listing of the Preferred Securities upon The Nasdaq National Market or such securities exchange or exchanges as shall be determined by the Depositor, the

- registration of the Preferred Securities under the Exchange Act, the compliance with the listing requirements of The Nasdaq National Market or the applicable securities exchanges and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;
- (E) the sending of notices (other than notices of default) and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;
 - (F) the appointment of a Paying Agent, Authenticating Agent and Securities Registrar in accordance with this Trust Agreement;
 - (G) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;
 - (H) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Preferred Securities or to enable the Trust to effect the purposes for which the Trust was created; and
 - (I) the taking of any action incidental to the foregoing as the Administrative Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder).
- (ii) As among the Trustees, the Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:
- (A) the establishment of the Payment Account;
 - (B) the receipt of the Debentures;
 - (C) the collection of interest, principal and any other payments made in respect of the Debentures in the Payment Account;

- (D) the distribution of amounts owed to the Securityholders in respect of the Trust Securities in accordance with the terms of this Trust Agreement;
 - (E) the exercise of all of the rights, powers and privileges of a holder of the Debentures;
 - (F) the sending of notices of default and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;
 - (G) the distribution of the Trust Property in accordance with the terms of this Trust Agreement;
 - (H) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust;
 - (I) after an Event of Default, the taking of any action incidental to the foregoing as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement and protect and conserve the Trust Property for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder);
 - (J) registering transfers of the Trust Securities in accordance with this Trust Agreement; and
 - (K) except as otherwise provided in this Section 2.7(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 2.7(a)(i).
- (b) So long as this Trust Agreement remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustees shall not (i) acquire any investments or engage in any activities not authorized by this Trust Agreement; (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Securityholders, or acquire any assets, in each case, except as expressly provided herein; (iii) take any action that would cause the Trust to fail or cease to qualify as a "grantor trust" for United States federal income tax purposes; (iv) incur any indebtedness for borrowed money or issue any other debt; or (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property. The Administrative Trustees shall defend all claims and demands of all

Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Securityholders in their capacity as Securityholders.

- (c) In connection with the issue and sale of the Preferred Securities, the Depositor shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Depositor in furtherance of the following prior to the date of this Trust Agreement are hereby ratified and confirmed in all respects):
- (i) the preparation and filing by the Trust with the Commission and the execution on behalf of the Trust of a registration statement on the appropriate form in relation to the Preferred Securities, the Debentures, and the Guarantee, including any amendments thereto;
 - (ii) the determination of the states in which to take appropriate action to qualify or, register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by or on behalf of the Trust, and advise the Trustees of actions they must take on behalf of the Trust, and prepare for execution and filing any documents to be executed and filed by the Trust or on behalf of the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such States;
 - (iii) the preparation for filing by the Trust and execution on behalf of the Trust of an application to The Nasdaq National Market or a national stock exchange or other organizations for listing upon notice of issuance of any Preferred Securities and to file or cause an Administrative Trustee to file thereafter with such exchange or organization such notifications and documents as may be necessary from time to time;
 - (iv) the preparation for filing by the Trust with the Commission and the execution on behalf of the Trust of a registration statement on Form 8-A relating to the registration of the Preferred Securities under Section 12(b) or 12(g) of the Exchange Act, including any amendments thereto; and
 - (v) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.
- (d) Notwithstanding anything herein to the contrary, the Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust shall not be deemed to be an "investment company" required to be registered under the Investment Company Act, shall be classified as a "grantor trust" and not as an association taxable as

a corporation for United States federal income tax purposes and so that the Debentures shall be treated as indebtedness of the Depositor for United States federal income tax purposes. In this connection, subject to Section 10.2, the Depositor and the Administrative Trustees are authorized to take any action, not inconsistent with applicable law or this Trust Agreement, that each of the Depositor and the Trustees determines in their discretion to be necessary or desirable for such purposes.

2.8 Assets of Trust.

The assets of the Trust shall consist of the Trust Property.

2.9 Title to Trust Property.

Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee for the benefit of the Securityholders in accordance with this Trust Agreement.

ARTICLE III

PAYMENT ACCOUNT

3.1 Payment Account.

- (a) On or prior to the Closing Date, the Property Trustee shall establish the Payment Account. The Property Trustee and any agent of the Property Trustee shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits and withdrawals from the Payment Account in accordance with this Trust Agreement. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Securityholders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.
- (b) The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or interest on, and any other payments or proceeds with respect to, the Debentures. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

ARTICLE IV

DISTRIBUTIONS; REDEMPTION

4.1 Distributions.

- (a) Distributions on the Trust Securities shall be cumulative, and shall accumulate whether or not there are funds of the Trust available for the payment of Distributions. Distributions shall accumulate from [_____], and, except during any Extended Interest Payment Period with respect to the Debentures, shall be payable quarterly in arrears on the last calendar day of March, June, September and December of each year, commencing on [_____]. If any date on which a Distribution is otherwise payable on the Trust Securities is not a Business Day, then the payment of such Distribution 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) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as if made on such date (each date on which distributions are payable in accordance with this Section 4.1(a), a "Distribution Date").
- (b) The Trust Securities represent undivided beneficial interests in the Trust Property. Distributions on the Trust Securities shall be payable at a rate of [_____] % per annum of the Liquidation Amount of the Trust Securities. The amount of Distributions payable for any full period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. During any Extended Interest Payment Period with respect to the Debentures, Distributions on the Preferred Securities shall be deferred for a period equal to the Extended Interest Payment Period. The amount of Distributions payable for any period shall include the Additional Amounts, if any.
- (c) Distributions on the Trust Securities shall be made by the Property Trustee solely from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds on hand and immediately available by 12:30 p.m. on each Distribution Date in the Payment Account for the payment of such Distributions.
- (d) Distributions on the Trust Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be the 15th day of March, June, September or December for Distributions

payable on the last calendar day of the respective month; provided, however, that for any Trust Securities held in global form, Distributions shall be payable to the Holder thereof as of one Business Day immediately preceding the Distribution Date.

4.2 Redemption.

- (a) On each Debenture Redemption Date and on the maturity of the Debentures, the Trust shall be required to redeem a Like Amount of Trust Securities at the Redemption Price.
- (b) Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Securities Register. The Property Trustee shall have no responsibility for the accuracy of any CUSIP number contained in such notice. All notices of redemption shall state:
 - (i) the Redemption Date;
 - (ii) the Redemption Price;
 - (iii) the CUSIP number;
 - (iv) if less than all the Outstanding Trust Securities are to be redeemed, the identification and the aggregate Liquidation Amount of the particular Trust Securities to be redeemed;
 - (v) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Trust Security to be redeemed and that Distributions thereon shall cease to accumulate on and after said date, except as provided in Section 4.2(d); and
 - (vi) the place or places at which Trust Securities are to be surrendered for the payment of the Redemption Price.
- (c) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption of Debentures. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has immediately available funds then on hand and available in the Payment Account for the payment of such Redemption Price.
- (d) If the Property Trustee gives a notice of redemption in respect of any Preferred Securities, then, by 12:00 noon, New York City time, on the Redemption Date, the Property Trustee, subject to Section 4.2(c), shall,

with respect to Preferred Securities held in global form, deposit with the Clearing Agency for such Preferred Securities, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities. With respect to Trust Securities that are not held in global form, the Property Trustee, subject to Section 4.2(c), shall deposit with the Paying Agent funds sufficient to pay the applicable Redemption Price and shall give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the record holders thereof upon surrender of their Preferred Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, (i) all rights of Securityholders holding Trust Securities so called for redemption shall cease, except the right of such Securityholders to receive the Redemption Price, but without interest and (ii) such Trust Securities shall cease to be Outstanding. In the event that any date on which any Redemption Price is payable is not a Business Day, then payment of the Redemption Price 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) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Depositor pursuant to the Guarantee, Distributions on such Trust Securities shall continue to accumulate, at the then applicable rate, from the Redemption Date originally established by the Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date shall be the date fixed for redemption for purposes of calculating the Redemption Price.

- (e) Payment of the Redemption Price on the Trust Securities shall be made to the record holders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be the date 15 days prior to the relevant Redemption Date.
- (f) Subject to Section 4.3(a), if less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Trust Securities to be redeemed shall be allocated on a pro rata basis (based on Liquidation Amounts) among the Common Securities and

the Preferred Securities. The particular Preferred Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Preferred Securities not previously called for redemption, by such method (including, without limitation, by lot) as the Property Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to such Liquidation Amount or an integral multiple of such Liquidation Amount in excess thereof) of the Liquidation Amount of Preferred Securities of a denomination larger than such Liquidation Amount; provided, however, in the event the redemption relates only to Preferred Securities purchased and held by the Depositor being redeemed in exchange for a Like Amount of Debentures, the Property Trustee shall select those particular Preferred Securities for redemption. The Property Trustee shall promptly notify the Securities Registrar in writing of the Preferred Securities selected for redemption and, in the case of any Preferred Securities selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Preferred Securities shall relate, in the case of any Preferred Securities redeemed or to be redeemed only in part, to the portion of the Liquidation Amount of Preferred Securities which has been or is to be redeemed.

4.3 Subordination of Common Securities.

- (a) Payment of Distributions (including Additional Amounts, if applicable) on, and the Redemption Price of, the Trust Securities, as applicable, shall be made, subject to Section 4.2(f), pro rata among the Common Securities and the Preferred Securities based on the Liquidation Amount of the Trust Securities; provided, however, that if on any Distribution Date or Redemption Date any Event of Default resulting from a Debenture Event of Default shall have occurred and be continuing, no payment of any Distribution (including Additional Amounts, if applicable) on, or Redemption Price of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions (including Additional Amounts, if applicable) on all Outstanding Preferred Securities for all Distribution periods terminating on or prior thereto, or in the case of payment of the Redemption Price the full amount of such Redemption Price on all Outstanding Preferred Securities then called for redemption, shall have been made or provided for, and all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions (including Additional Amounts, if applicable) on, or the Redemption Price of, Preferred Securities then due and payable.

- (b) In the case of the occurrence of any Event of Default resulting from a Debenture Event of Default, the Holder of Common Securities shall be deemed to have waived any right to act with respect to any such Event of Default under this Trust Agreement until the effect of all such Events of Default with respect to the Preferred Securities shall have been cured, waived or otherwise eliminated. Until any such Event of Default under this Trust Agreement with respect to the Preferred Securities shall have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the Preferred Securities and not the Holder of the Common Securities, and only the Holders of the Preferred Securities shall have the right to direct the Property Trustee to act on their behalf.

4.4 Payment Procedures.

Payments of Distributions (including Additional Amounts, if applicable) in respect of the Preferred Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Preferred Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds, which will credit the relevant accounts on the applicable Distribution Dates. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Common Securityholder.

4.5 Tax Returns and Reports.

The Administrative Trustees shall prepare (or cause to be prepared), at the Depositor's expense, and file all United States federal, state and local tax and information returns and reports required to be filed by or in respect of the Trust. In this regard, the Administrative Trustees shall (a) prepare and file (or cause to be prepared and filed) the appropriate Internal Revenue Service forms required to be filed in respect of the Trust in each taxable year of the Trust; and (b) prepare and furnish (or cause to be prepared and furnished) to each Securityholder the appropriate Internal Revenue Service forms required to be furnished to such Securityholder or the information required to be provided on such form. The Administrative Trustees shall provide the Depositor with a copy of all such returns and reports promptly after such filing or furnishing. The Property Trustee shall comply with United States federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Securityholders under the Trust Securities.

4.6 Payment of Taxes, Duties, etc. of the Trust.

Upon receipt under the Debentures of Additional Interest, the Property Trustee, at the direction of an Administrative Trustee or the Depositor, shall promptly pay any taxes, duties or governmental charges of whatsoever nature (other than withholding taxes) imposed on the Trust by the United States or any other taxing authority.

4.7 Payments Under Indenture.

Any amount payable hereunder to any Holder of Preferred Securities shall be reduced by the amount of any corresponding payment such Holder has directly received under the Indenture pursuant to Section 5.13(b) or (c) hereof.

ARTICLE V

TRUST SECURITIES CERTIFICATES

5.1 Initial Ownership.

Upon the creation of the Trust and the contribution by the Depositor pursuant to Section 2.3 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are outstanding, the Depositor shall be the sole beneficial owner of the Trust.

5.2 The Trust Securities Certificates.

The Preferred Securities Certificates shall be issued in minimum denominations of the Liquidation Amount and integral multiples of the Liquidation Amount in excess thereof, and the Common Securities Certificates shall be issued in denominations of the Liquidation Amount and multiples thereof (which may, in the case of the Common Securities, include fractional amounts). The Trust Securities Certificates shall be executed on behalf of the Trust by manual or facsimile signature of at least one Administrative Trustee. Trust Securities Certificates bearing the manual or facsimile signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefits of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Securityholder, and shall be entitled to the rights and subject to the obligations of a Securityholder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Sections 5.4, 5.11 and 5.13.

5.3 Execution, Authentication and Delivery of Trust Securities Certificates.

- (a) On the Closing Date and on any Option Closing Date, the Administrative Trustees shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 2.4 and 2.5, to be executed on behalf of the Trust by at least one of the Administrative Trustees and delivered to or upon the written order of the Depositor, signed by its Chief Executive Officer, President, any Vice President or its Treasurer without further corporate action by the Depositor, in authorized denominations.
- (b) A Preferred Securities Certificate shall not be valid until authenticated by the manual signature of an authorized signatory of the Property Trustee in substantially the form of Exhibit E attached hereto. The signature shall be conclusive evidence that the Preferred Securities Certificate has been

authenticated under this Trust Agreement. Each Preferred Security Certificate shall be dated the date of its authentication.

Upon the written order of the Trust signed by one of the Administrative Trustees, the Property Trustee shall authenticate and make available for delivery the Preferred Securities Certificates.

The Property Trustee may appoint an Authenticating Agent acceptable to the Trust to authenticate the Preferred Securities. An Authenticating Agent may authenticate the 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 the Trust.

5.3A. Global Preferred Security.

- (a) Any Global Preferred Security issued under this Trust Agreement shall be registered in the name of the nominee of the Clearing Agency and delivered to such custodian therefor, and such Global Preferred Security shall constitute a single Preferred Security for all purposes of this Trust Agreement.
- (b) Notwithstanding any other provision in this Trust Agreement, no Global Preferred Security may be exchanged for Preferred Securities registered in the names of persons other than the Depository or its nominee unless (i) the Depository notifies the Debenture Trustee that it is unwilling or unable to continue as a depository for such Global Preferred Securities and the Depositor is unable to locate a qualified successor depository, (ii) the Depositor executes and delivers to the Debenture Trustee a written order stating that it elects to terminate the book-entry system through the Depository or (iii) there shall have occurred and be continuing a Debenture Event of Default.
- (c) If a Preferred Security is to be exchanged in whole or in part for a beneficial interest in a Global Preferred Security, then either (i) such Global Preferred Security shall be so surrendered for exchange or cancellation as provided in this Article V or (ii) the Liquidation Amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or cancelled, or equal to the Liquidation Amount of such other Preferred Securities to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Property Trustee, in accordance with the rules and procedures of the Depository for such Global Preferred Security (the "Applicable Procedures"), shall instruct the Clearing Agency or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Preferred Security by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees shall execute and the Property Trustee shall, subject

to Section 5.4(b) and as otherwise provided in this Article V, authenticate and deliver any Preferred Securities issuable in exchange for such Global Preferred Security (or any portion thereof) in accordance with the instructions of the Clearing Agency. The Property Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

- (d) Every Preferred Security executed, authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Preferred Security or any portion thereof, whether pursuant to this Article V or otherwise, shall be executed, authenticated and delivered in the form of, and shall be, a Global Preferred Security, unless such Global Preferred Security is registered in the name of a Person other than the Clearing Agency for such Global Preferred Security or a nominee thereof.
- (e) The Clearing Agency or its nominee, as the registered owner of a Global Preferred Security, shall be considered the Holder of the Preferred Securities represented by such Global Preferred Security for all purposes under this Trust Agreement and the Preferred Securities, and owners of beneficial interests in such Global Preferred Security shall hold such interests pursuant to the Applicable Procedures and, except as otherwise provided herein, shall not be entitled to receive physical delivery of any such Preferred Securities in definitive form and shall not be considered the Holders thereof under this Trust Agreement. Accordingly, any such owner's beneficial interest in the Global Preferred Securities shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Clearing Agency or its nominee. Neither the Property Trustee, the Securities Registrar nor the Depositor shall have any liability in respect of any transfers effected by the Clearing Agency.
- (f) The rights of owners of beneficial interests in a Global Preferred Security shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such owners and the Clearing Agency.

5.4 Registration of Transfer and Exchange of Preferred Securities Certificates.

- (a) The Depositor shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.8, a register or registers for the purpose of registering Trust Securities Certificates and, subject to the provisions of Section 5.3A, transfers and exchanges of Preferred Securities Certificates (herein referred to as the "Securities Register") in which the registrar designated by the Depositor (the "Securities Registrar"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Preferred Securities Certificates and Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of Preferred

Securities Certificates as herein provided. The Property Trustee shall be the initial Securities Registrar.

- (b) Subject to the provisions of Section 5.3A, upon surrender for registration of transfer of any Preferred Securities Certificate at the office or agency maintained pursuant to Section 5.8, the Administrative Trustees or any one of them shall execute and deliver, in the name of the designated transferee or transferees, one or more new Preferred Securities Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by such Administrative Trustee or Trustees. The Securities Registrar shall not be required to register the transfer of any Preferred Securities that have been called for redemption. At the option of a Holder, Preferred Securities Certificates may be exchanged for other Preferred Securities Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the Preferred Securities Certificates to be exchanged at the office or agency maintained pursuant to Section 5.8.
- (c) Every Preferred Securities Certificate presented or surrendered for registration of transfer or exchange, subject to the provisions of Section 5.3A, shall be accompanied by a written instrument of transfer in form satisfactory to the Property Trustee and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each Preferred Securities Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by the Property Trustee in accordance with its customary practice. The Trust shall not be required to (i) issue, register the transfer of, or exchange any Preferred Securities during a period beginning at the opening of business 15 calendar days before the date of mailing of a notice of redemption of any Preferred Securities called for redemption and ending at the close of business on the day of such mailing; or (ii) register the transfer of or exchange any Preferred Securities so selected for redemption, in whole or in part, except the unredeemed portion of any such Preferred Securities being redeemed in part.
- (d) No service charge shall be made for any registration of transfer or exchange of Preferred Securities Certificates, subject to the provisions of Section 5.3A, but the Securities Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Preferred Securities Certificates.
- (e) Preferred Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Trust Agreement. To the fullest extent permitted by law, any transfer or purported transfer of any Preferred Security not made in accordance with this Trust Agreement shall be null and void. A Preferred Security that is

not a Global Preferred Security may be transferred, in whole or in part, to a Person who takes delivery in the form of another Preferred Security that is not a Global Preferred Security as provided in Section 5.4(a). A beneficial interest in a Global Preferred Security may be exchanged for a Preferred Security that is not a Global Preferred Security only as provided in Section 5.3A.

5.5 Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates.

If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate; and (b) there shall be delivered to the Securities Registrar and the Administrative Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a protected purchaser, the Administrative Trustees, or any one of them, on behalf of the Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section 5.5, the Administrative Trustees or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Securities Certificate issued pursuant to this Section 5.5 shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Trust, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

5.6 Persons Deemed Securityholders.

The Trustees, the Paying Agent and the Securities Registrar shall treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and neither the Trustees nor the Securities Registrar shall be bound by any notice to the contrary.

5.7 Access to List of Securityholders' Names and Addresses.

At any time when the Property Trustee is not also acting as the Securities Registrar, the Administrative Trustees or the Depositor shall furnish or cause to be furnished to the Property Trustee (a) within five Business Days of March 15, June 15, September 15 and December 15 of each year, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Securityholders as of the most recent record date; and (b) promptly after receipt by any Administrative Trustee or the Depositor of a request therefor from the Property Trustee in order to enable the Property Trustee to discharge its obligations under this Trust Agreement, in each case to the extent such information is in the possession or control of the Administrative Trustees or the Depositor and is not identical to a previously supplied list or has not otherwise been received by the Property Trustee in its capacity as Securities Registrar. The rights of Securityholders to communicate with other Securityholders with respect to their rights under this Trust Agreement or under the Trust Securities, and the corresponding rights of the Trustee shall be as provided in the

Trust Indenture Act. Each Holder, by receiving and holding a Trust Securities Certificate, and each owner shall be deemed to have agreed not to hold the Depositor, the Property Trustee or the Administrative Trustees accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

5.8 Maintenance of Office or Agency.

The Administrative Trustees shall maintain, or cause to be maintained, in Wilmington, Delaware, or other location designated by the Administrative Trustees, an office or offices or agency or agencies where Preferred Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Trust Securities Certificates may be served. The Administrative Trustees initially designate the Corporate Trust Office of the Property Trustee, One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration, as the principal corporate trust office for such purposes. The Administrative Trustees shall give prompt written notice to the Depositor and to the Securityholders of any change in the location of the Securities Register or any such office or agency.

5.9 Appointment of Paying Agent.

The Paying Agent shall make Distributions to Securityholders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Administrative Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account for the purpose of making the Distributions referred to above. The Administrative Trustees may revoke such power and remove the Paying Agent if such Trustees determine in their sole discretion that the Paying Agent shall have failed to perform its obligations under this Trust Agreement in any material respect. The Paying Agent shall initially be the Property Trustee, and any co-paying agent chosen by the Property Trustee must be acceptable to the Administrative Trustees and the Depositor. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Administrative Trustees, the Property Trustee and the Depositor. In the event that the Property Trustee shall no longer be the Paying Agent or a successor Paying 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 Paying Agent (which shall be a bank or trust company). The Administrative Trustees shall cause such successor Paying Agent or any additional Paying Agent appointed by the Administrative Trustees to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent shall hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the Securityholders entitled thereto until such sums shall be paid to such Securityholders. The Paying Agent shall return all unclaimed funds to the Property Trustee and, upon removal of a Paying Agent, such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 8.1, 8.3 and 8.6 shall apply to the Property Trustee also in its role as Paying Agent, for so long as the Property Trustee shall act as Paying Agent and, to the extent applicable, to any other Paying Agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

5.10 Ownership of Common Securities by Depositor.

On the Closing Date and on any Option Closing Date, the Depositor shall acquire and retain beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, any attempted transfer of the Common Securities (other than a transfer in connection with a merger or consolidation of the Depositor into another corporation pursuant to Section 9.1 of the Indenture) shall be void. The Administrative Trustees shall cause each Common Securities Certificate issued to the Depositor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT AS PROVIDED IN THE TRUST AGREEMENT (AS DEFINED BELOW)."

5.11 Trust Securities Certificates.

- (a) Upon their original issuance, Preferred Securities Certificates shall be issued in the form of one or more fully registered Global Preferred Securities Certificates which will be deposited with or on behalf of the Clearing Agency and registered in the name of the Clearing Agency's nominee. Unless and until it is exchangeable in whole or in part for the Preferred Securities in definitive form, a global security may not be transferred except 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 or by the Clearing Agency or any such nominee to a successor of such Clearing Agency or a nominee of such successor.
- (b) A single Common Securities Certificate representing the Common Securities shall be issued to the Depositor in the form of a definitive Common Securities Certificate.

5.12 Notices to Clearing Agency.

To the extent that a notice or other communication to the Holders is required under this Trust Agreement, for so long as Preferred Securities are represented by a Global Preferred Securities Certificate, the Trustees shall give all such notices and communications specified herein to be given to the Clearing Agency, and shall have no obligation to provide notice to the owners of the beneficial interest in the Global Preferred Securities.

5.13 Rights of Securityholders.

- (a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 2.9, and the Securityholders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Trust Securities shall have no preemptive or similar rights. When issued and

delivered to Holders of the Preferred Securities against payment of the purchase price therefor, the Preferred Securities shall be fully paid and nonassessable interests in the Trust. The Holders of the Preferred Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

- (b) For so long as any Preferred Securities remain Outstanding, if, upon a Debenture Event of Default, the Debenture Trustee fails or the holders of not less than 25% in principal amount of the outstanding Debentures fail to declare the principal of all of the Debentures to be immediately due and payable, the Holders of at least 25% in Liquidation Amount of the Preferred Securities then Outstanding shall have such right by a notice in writing to the Depositor and the Debenture Trustee; and upon any such declaration such principal amount of and the accrued interest on all of the Debentures shall become immediately due and payable, provided that the payment of principal and interest on such Debentures shall remain subordinated to the extent provided in the Indenture.
- (c) For so long as any Preferred Securities remain Outstanding, upon a Debenture Event of Default arising from the failure to pay interest or principal on the Debentures, the Holders of any Preferred Securities then Outstanding shall, to the fullest extent permitted by law, have the right to directly institute proceedings for enforcement of payment to such Holders of principal of or interest on the Debentures having a principal amount equal to the Liquidation Amount of the Preferred Securities of such Holders.

ARTICLE VI

ACTS OF SECURITYHOLDERS; MEETINGS; VOTING

6.1 Limitations on Voting Rights.

- (a) Except as provided in this Section 6.1, in Sections 5.13, 8.10 and 10.2 and in the Indenture and as otherwise required by law, no record Holder of Preferred Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.
- (b) So long as any Debentures are held by the Property Trustee on behalf of the Trust, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on the Debenture

Trustee with respect to such Debentures; (ii) waive any past default which is waivable under Article V of the Indenture; (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; 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 at least 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 outstanding Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Preferred Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Outstanding Preferred Securities, except by a subsequent vote of the Holders of the Outstanding Preferred Securities. The Property Trustee shall notify each Holder of the Outstanding Preferred Securities of any notice of default received from the Debenture Trustee with respect to the Debentures. In addition to obtaining the foregoing approvals of the Holders of the Preferred Securities, prior to taking any of the foregoing actions, the Trustees shall, at the expense of the Depositor, obtain an Opinion of Counsel experienced in such matters to the effect that the Trust shall continue to be classified as a grantor trust and not as an association taxable as a corporation for United States federal income tax purposes on account of such action.

- (c) If any proposed amendment to the Trust Agreement provides for, or the Trustees otherwise propose to effect, (i) any action that would adversely affect in any material respect the powers, preferences or special rights of the Preferred Securities, whether by way of amendment to the Trust Agreement or otherwise; or (ii) the dissolution, winding-up or termination of the Trust, other than pursuant to the terms of this Trust Agreement, then the Holders of Outstanding Preferred Securities as a class shall be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of at least a majority in Liquidation Amount of the Outstanding Preferred Securities. No amendment to this Trust Agreement may be made if, as a result of such amendment, the Trust would cease to be classified as a grantor trust or would be classified as an association taxable as a corporation for United States federal income tax purposes.

6.2 Notice of Meetings.

Notice of all meetings of the Preferred Securityholders, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 10.8 to each Preferred Securityholder of record, at his registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered

whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

6.3 Meetings of Preferred Securityholders.

- (a) No annual meeting of Securityholders is required to be held. The Administrative Trustees, however, shall call a meeting of Securityholders to vote on any matter in respect of which Preferred Securityholders are entitled to vote upon the written request of the Preferred Securityholders of 25% of the Outstanding Preferred Securities (based upon their aggregate Liquidation Amount) and the Administrative Trustees or the Property Trustee may, at any time in their discretion, call a meeting of Preferred Securityholders to vote on any matters as to which the Preferred Securityholders are entitled to vote.
- (b) Preferred Securityholders of record of 50% of the Outstanding Preferred Securities (based upon their aggregate Liquidation Amount), present in person or by proxy, shall constitute a quorum at any meeting of Securityholders.
- (c) If a quorum is present at a meeting, an affirmative vote by the Preferred Securityholders of record present, in person or by proxy, holding a majority of the Preferred Securities (based upon their aggregate Liquidation Amount) held by the Preferred Securityholders of record present, either in person or by proxy, at such meeting shall constitute the action of the Securityholders, unless this Trust Agreement requires a greater number of affirmative votes.

6.4 Voting Rights.

Securityholders shall be entitled to one vote for each \$10 of Liquidation Amount represented by their Trust Securities (with any fractional multiple thereof rounded up or down as the case may be to the closest integral multiple) in respect of any matter as to which such Securityholders are entitled to vote.

6.5 Proxies, etc.

At any meeting of Securityholders, any Securityholder entitled to vote thereat may vote by proxy, provided that no proxy, shall be voted at any meeting unless it shall have been placed on file with the Administrative Trustees, or with such other officer or agent of the Trust as the Administrative Trustees may direct, for verification prior to the time at which such vote shall be taken. Only Holders shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and, the burden of

proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

6.6 Securityholder Action by Written Consent.

Any action which may be taken by Securityholders at a meeting may be taken without a meeting and without prior notice if all Securityholders are provided with a request for written consent and Securityholders holding a majority of all Outstanding Trust Securities (based upon their aggregate Liquidation Amount) entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any express provision of this Trust Agreement) shall consent to the action in writing (based upon their aggregate Liquidation Amount).

6.7 Record Date for Voting and Other Purposes.

For the purposes of determining the Securityholders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any Distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Trust Agreement, or for the purpose of any other action, the Administrative Trustees or the Property Trustee may from time to time fix a date, not more than 90 days prior to the date of any meeting of Securityholders or the payment of Distribution or other action, as the case may be, as a record date for the determination of the identity of the Securityholders of record for such purposes.

6.8 Acts of Securityholders.

- (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Trust Agreement to be given, made or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to an Administrative Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Trust Agreement and (subject to Section 8.1) conclusive in favor of the Trustees, if made in the manner provided in this Section 6.8.
- (b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument

or writing, or the authority of the Person executing the same, may also be proved in any other manner which any Trustee receiving the same deems sufficient.

- (c) The ownership of Preferred Securities shall be proved by the Securities Register.
- (d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Securityholder of any Trust Security shall bind every future Securityholder of the same Trust Security and the Securityholder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.
- (e) Without limiting the foregoing, a Securityholder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such liquidation amount.

6.9 Inspection of Records.

Upon reasonable notice to the Administrative Trustees and the Property Trustee, the records of the Trust shall be open to inspection at the principal executive office of the Trust (as indicated in Section 2.2) by Holders of the Trust Securities during normal business hours for any purpose reasonably related to such Holder's interest as a Holder.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Bank.

The Bank, as of the date hereof, and each successor Property Trustee at the time of the successor Property Trustee's acceptance of its appointment as Property Trustee hereunder (in the case of a successor Property Trustee, the term "Bank" as used herein shall be deemed to refer to such successor Property Trustee in its separate corporate capacity), hereby represents and warrants (as applicable) for the benefit of the Depositor and the Securityholders that:

- (a) the Bank is duly organized, validly existing and in good standing under the federal laws of the United States of America and has its principal place of business in Delaware as required by Section 3807(a) of the Delaware Business Trust Act;
- (b) the Bank has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has

taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;

- (c) this Trust Agreement has been duly authorized, executed and delivered by the Bank and constitutes the valid and legally binding agreement of the Bank enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors, rights and to general equity principles;
- (d) the execution, delivery and performance by the Bank of this Trust Agreement have been duly authorized by all necessary corporate or other action on the part of the Bank and do not require any approval of stockholders of the Bank and such execution, delivery and performance shall not (i) violate the Bank's Articles of Organization or by-laws; (ii) violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Bank is a party or by which it is bound; or (iii) violate any law, governmental rule or regulation of the United States or the State of Delaware, as the case may be, governing the banking or trust powers of the Bank or any order, judgment or decree applicable to the Bank;
- (e) neither the authorization, execution or delivery by the Bank of this Trust Agreement nor the consummation of any of the transactions by the Bank contemplated herein or therein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing federal law governing the banking or trust powers of the Bank under the laws of the United States or the State of Delaware;
- (f) there are no proceedings pending or, to the best of the Bank's knowledge, threatened against or affecting the Bank in any court or before any governmental authority, agency or arbitration board or tribunal which, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Bank to enter into or perform its obligations as one of the Trustees under this Trust Agreement; and
- (g) the Bank is a Person eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000.

7.2 [RESERVED]

7.3 Representations and Warranties of Depositor.

The Depositor hereby represents and warrants for the benefit of the Securityholders that:

- (a) the Trust Securities Certificates issued on the Closing Date or the Option Closing Date, if applicable, on behalf of the Trust have been duly authorized and, shall have been, duly and validly executed, issued and delivered by the Administrative Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Trust Agreement and the Securityholders shall be, as of such date, entitled to the benefits of this Trust Agreement; and
- (b) there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) in connection with the execution, delivery and performance by the Bank, the Property Trustee or the Delaware Trustee, as the case may be, of this Trust Agreement.

ARTICLE VIII

TRUSTEES

8.1 Certain Duties and Responsibilities.

- (a) The duties and responsibilities of the Trustees shall be as provided by this Trust Agreement and, in the case of the Property Trustee, by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Trust Agreement shall require the Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. No Administrative Trustee nor the Delaware Trustee shall be liable for its act or omissions hereunder except as a result of its own gross negligence or willful misconduct. The Property Trustee's liability shall be determined under the Trust Indenture Act. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section 8.1. To the extent that, at law or in equity, the Delaware Trustee or an Administrative Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Securityholders, the Delaware Trustee or such Administrative Trustee shall not be liable to the Trust or to any Securityholder for such Trustee's 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 the Delaware Trustee or

the Administrative Trustees otherwise existing at law or in equity, are agreed by the Depositor and the Securityholders to replace such other duties and liabilities of the Delaware Trustee or the Administrative Trustees, as the case may be.

- (b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Securityholder, by its acceptance of a Trust Security, agrees that it shall look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees are not personally liable to it for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.1(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.
- (c) No provision of this Trust Agreement shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:
 - (i) the Property Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Property Trustee, unless it shall be proved that the Property Trustee was negligent in ascertaining the pertinent facts;
 - (ii) 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 Trust 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;
 - (iii) the Property Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Payment Account shall be to deal with such property in a similar manner as the Property Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Property Trustee under this Trust Agreement and the Trust Indenture Act;
 - (iv) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the

Depositor and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law; and

- (d) 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 the negligence, default or misconduct of the Administrative Trustees or the Depositor.

8.2 Certain Notices.

- (a) Within five Business Days after the occurrence of any Event of Default actually known to the Property Trustee, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.8, notice of such Event of Default to the Securityholders, the Administrative Trustees and the Depositor, unless such Event of Default shall have been cured or waived. For purposes of this Section 8.2 the term "Event of Default" means any event that is, or after notice or lapse of time or both would become, an Event of Default.
- (b) The Administrative Trustees shall transmit, to the Securityholders in the manner and to the extent provided in Section 10.8, notice of the Depositor's election to begin or further extend an Extended Interest Payment Period on the Debentures (unless such election shall have been revoked) and of any election by the Depositor to accelerate the Maturity Date of the Debentures, as defined in the Indenture, within the time specified for transmitting such notice to the holders of the Debentures pursuant to the Indenture as originally executed.

8.3 Certain Rights of Property Trustee.

Subject to the provisions of Section 8.1:

- (a) the Property Trustee may rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) if (i) in performing its duties under this Trust Agreement, the Property Trustee is required to decide between alternative courses of action; or (ii) in construing any of the provisions of this Trust Agreement, the

Property Trustee finds the same ambiguous or inconsistent with other provisions contained herein; or (iii) the Property Trustee is unsure of the application of any provision of this Trust Agreement, then, except as to any matter as to which the Preferred Securityholders are entitled to vote under the terms of this Trust Agreement, the Property Trustee shall deliver a notice to the Depositor requesting written instructions of the Depositor as to the course of action to be taken and the Property Trustee shall take such action, or refrain from taking such action, as the Property Trustee shall be instructed in writing to take, or to refrain from taking, by the Depositor; provided, however, that if the Property Trustee does not receive such instructions of the Depositor within 10 Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than 2 Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Trust Agreement as it shall deem advisable and in the best interests of the Securityholders, in which event the Property Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;

- (c) any direction or act of the Depositor or the Administrative Trustees contemplated by this Trust Agreement shall be sufficiently evidenced by an Officers' Certificate;
- (d) whenever in the administration of this Trust Agreement, the Property Trustee shall deem it desirable that a matter be established before undertaking, 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;
- (e) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement, any filing under tax or securities laws or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;
- (f) the Property Trustee may consult with counsel of its choice (which counsel may be counsel to the Depositor or any of its Affiliates) and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and, in accordance with such advice, 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;

- (g) 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 of the Securityholders pursuant to this Trust Agreement, unless such Securityholders shall have offered to the Property Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction; nothing contained herein shall, however, relieve the Property Trustee of the obligation, upon the occurrence of any Event of Default (that has not been cured or waived) to exercise such of the rights and powers vested in it by this Trust Agreement, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs;
- (h) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by one or more Securityholders, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit;
- (i) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Property Trustee shall not be liable for the default or misconduct of such other agents or attorneys; provided that the Property Trustee shall be responsible for its own negligence or recklessness with respect to selection of any agent or attorney appointed by it hereunder;
- (j) 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 Trust Securities which instructions may only be given by the Holders of the same proportion in Liquidation Amount of the Trust Securities as would be entitled to direct the Property Trustee under the terms of the Trust Securities in respect of such remedy, right or action; (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received; and (iii) shall be protected in acting in accordance with such instructions; and
- (k) 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. 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.

8.4 Not Responsible for Recitals or Issuance of Securities.

The Recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Depositor of the proceeds of the Debentures.

8.5 May Hold Securities.

Any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 8.8 and 8.13 and except as provided in the definition of the term "Outstanding" in Article I, may otherwise deal with the Trust with the same rights it would have if it were not a Trustee or such other agent.

8.6 Compensation; Indemnity; Fees.

The Depositor agrees:

- (a) to pay to the Trustees from time to time compensation for all services rendered by them hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), in the case of the Property Trustee, as set forth in a written agreement between the Depositor and the Property Trustee;
- (b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to such Trustee's negligence, bad faith or willful misconduct (or, in the case of the Administrative Trustees or the Delaware Trustee, any such expense, disbursement or advance as may be attributable to its, his or her gross negligence, bad faith or willful misconduct); and
- (c) to indemnify each of the Trustees or any predecessor Trustee for, and to hold the Trustees harmless against, any loss, damage, claims, liability, penalty or expense of any kind or nature whatsoever, arising out of or in connection with the acceptance or administration of this Trust Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder, except any such expense, disbursement or advance as may be attributable to such Trustee's negligence, bad faith or

willful misconduct for (or, in the case of the Administrative Trustees or the Delaware Trustee, any such expense, disbursement or advance as may be attributable to its, his or her gross negligence, bad faith or willful misconduct).

No Trustee may claim any Lien or charge on Trust Property as a result of any amount due and unpaid pursuant to this Section 8.6.

8.7 Corporate Property Trustee Required; Eligibility of Trustees.

- (a) There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 8.7, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section 8.7, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VIII. The Property Trustee and the Delaware Trustee may be the same Person.
- (b) There shall at all times be one or more Administrative Trustees hereunder with respect to the Trust Securities. Each Administrative Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity.
- (c) There shall at all times be a Delaware Trustee with respect to the Trust Securities. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware; or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law that shall act through one or more persons authorized to bind such entity.

8.8 Conflicting Interests.

If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Trust Agreement.

8.9 Co-Trustees and Separate Trustee.

- (a) Unless a Debenture Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal

requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Depositor shall have power to appoint, and upon the written request of the Property Trustee, the Depositor shall for such purpose join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Property Trustee either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 8.9. If the Depositor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case a Debenture Event of Default has occurred and is continuing, the Property Trustee alone shall have power to make such appointment. Any co-trustee or separate trustee appointed pursuant to this Section 8.9 shall either be (i) a natural person who is at least 21 years of age and a resident of the United States; or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity.

- (b) Should any written instrument from the Depositor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right, or power, any and all such instruments shall, on request, be executed, acknowledged, and delivered by the Depositor.
- (c) Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:
 - (i) The Trust Securities shall be executed and delivered and all rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustees specified hereunder, shall be exercised, solely by such Trustees and not by such co-trustee or separate trustee.
 - (ii) The rights, powers, duties and obligations hereby conferred or imposed upon the Property Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Property Trustee or by the Property Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the

Property Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

- (iii) The Property Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Depositor, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 8.9, and, in case a Debenture Event of Default has occurred and is continuing, the Property Trustee shall have the power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Depositor. Upon the written request of the Property Trustee, the Depositor shall join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 8.9.
- (iv) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee or any other trustee hereunder.
- (v) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.
- (vi) Any Act of Holders delivered to the Property Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

8.10 Resignation and Removal; Appointment of Successor.

- (a) No resignation or removal of any Trustee (the "Relevant Trustee") and no appointment of a successor Trustee pursuant to this Article VIII shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 8.11.
- (b) Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time with respect to the Trust Securities by giving written notice thereof to the Securityholders. If the instrument of acceptance by the successor Trustee required by Section 8.11 shall not have been delivered to the Relevant Trustee within 30 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Depositor, any court of competent jurisdiction for the appointment of a successor Relevant Trustee with respect to the Trust Securities.

- (c) Unless a Debenture Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by Act of the Common Securityholder. If a Debenture Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at such time by Act of the Holders of a majority in Liquidation Amount of the Preferred Securities, delivered to the Relevant Trustee (in its individual capacity and on behalf of the Trust). An Administrative Trustee may be removed by the Common Securityholder at any time.
- (d) If any Trustee shall resign, be removed or become incapable of acting as Trustee, or if a vacancy shall occur in the office of any Trustee for any cause, at a time when no Debenture Event of Default shall have occurred and be continuing, the Common Securityholder, by Act of the Common Securityholder delivered to the retiring Trustee, shall promptly appoint a successor Trustee or Trustees with respect to the Trust Securities and the Trust, and the successor Trustee shall comply with the applicable requirements of Section 8.11. If the Property Trustee or the Delaware Trustee shall resign, be removed or become incapable of continuing to act as the Property Trustee or the Delaware Trustee, as the case may be, at a time when a Debenture Event of Default shall have occurred and is continuing, the Preferred Securityholders, by Act of the Securityholders of a majority in Liquidation Amount of the Preferred Securities then Outstanding delivered to the retiring Relevant Trustee, shall promptly appoint a successor Relevant Trustee or Trustees with respect to the Trust Securities and the Trust, and such successor Trustee shall comply with the applicable requirements of Section 8.11. If an Administrative Trustee shall resign, be removed or become incapable of acting as Administrative Trustee, at a time when a Debenture Event of Default shall have occurred and be continuing, the Common Securityholder, by Act of the Common Securityholder delivered to an Administrative Trustee, shall promptly appoint a successor Administrative Trustee or Administrative Trustees with respect to the Trust Securities and the Trust, and such successor Administrative Trustee or Administrative Trustees shall comply with the applicable requirements of Section 8.11. If no successor Relevant Trustee with respect to the Trust Securities shall have been so appointed by the Common Securityholder or the Preferred Securityholders and accepted appointment in the manner required by Section 8.11, any Securityholder who has been a Securityholder of Trust Securities on behalf of himself and all others similarly situated may petition a court of competent jurisdiction for the appointment Trustee with respect to the Trust Securities.
- (e) The Property Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all Securityholders in the manner provided in Section 10.8 and shall give notice to the Depositor. Each notice shall include the name of the

successor Relevant Trustee and the address of its Corporate Trust office if it is the Property Trustee.

- (f) Notwithstanding the foregoing or any other provision of this Trust Agreement, in the event any Administrative Trustee or a Delaware Trustee who is a natural person dies or becomes, in the opinion of the Depositor, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by (a) the unanimous act of remaining Administrative Trustees if there are at least two of them; or (b) otherwise by the Depositor (with the successor in each case being a Person who satisfies the eligibility requirement for Administrative Trustees set forth in Section 8.7).

8.11 Acceptance of Appointment by Successor.

- (a) In case of the appointment hereunder of a successor Relevant Trustee with respect to the Trust Securities and the Trust, the retiring Relevant Trustee (if requested by the Depositor) and each successor Relevant Trustee with respect to the Trust Securities shall execute and deliver an instrument hereto wherein each successor Relevant Trustee shall accept such appointment and which shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust and upon the execution and delivery of such instrument the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust; but, on request of the Trust or any successor Relevant Trustee such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Trust Securities and the Trust.
- (b) Upon request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the immediately preceding paragraph, as the case may be.
- (c) No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article VIII.

8.12 Merger, Conversion, Consolidation or Succession to Business.

Any Person into which the Property Trustee, the Delaware Trustee or any Administrative Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article VIII, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

8.13 Preferential Collection of Claims Against Depositor or Trust.

If and when the Property Trustee or the Delaware Trustee shall be or become a creditor of the Depositor or the Trust (or any other obligor upon the Debentures or the Trust Securities), the Property Trustee or the Delaware Trustee, as the case may be, shall be subject to and shall take all actions necessary in order to comply with the provisions of the Trust Indenture Act regarding the collection of claims against the Depositor or Trust (or any such other obligor).

8.14 Reports by Property Trustee.

- (a) On or before July 31 of each year, commencing July 31, 2002, the Property Trustee shall transmit to the Securityholders such reports concerning the Property Trustee, its actions under this Trust Agreement and the property and funds in its possession in its capacity as the Property Trustee as may be required pursuant to the Trust Indenture Act in the manner provided pursuant thereto.
- (b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Property Trustee with The Nasdaq National Market, and each national securities exchange or other organization upon which the Trust Securities are listed, and also with the Commission and the Depositor.

8.15 Reports to the Property Trustee.

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

8.16 Evidence of Compliance with Conditions Precedent.

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

8.17 Number of Trustees.

- (a) The number of Trustees shall be five, provided that the Holder of all of the Common Securities by written instrument may increase or decrease the number of Administrative Trustees. The Property Trustee and the Delaware Trustee may be the same Person.
- (b) If a Trustee ceases to hold office for any reason and the number of Administrative Trustees is not reduced pursuant to Section 8.17(a), or if the number of Trustees is increased pursuant to Section 8.17(a), a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 8.10.
- (c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul 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 8.10, the Administrative Trustees in office, regardless of their number (and notwithstanding any other provision of this Agreement), 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.

8.18 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 2.7(a); and
- (b) The Administrative Trustees shall have power to delegate from time to time to such of their number or to the Depositor 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.

8.19 Voting.

Except as otherwise provided in this Trust Agreement, the consent or approval of the Administrative Trustees shall require consent or approval by not less than a majority of the Administrative Trustees, unless there are only two, in which case both must consent.

ARTICLE IX

TERMINATION, LIQUIDATION AND MERGER

9.1 Termination Upon Expiration Date.

Unless earlier dissolved, the Trust shall automatically dissolve on [_____] (the "Expiration Date"), subject to distribution of the Trust Property in accordance with Section 9.4.

9.2 Early Termination.

The first to occur of any of the following events is an "Early Termination Event:"

- (a) the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Depositor;
- (b) delivery of written direction to the Property Trustee by the Depositor at any time (which direction is wholly optional and within the discretion of the Depositor, subject to Depositor having received prior approval of the Board of Governors of the Federal Reserve System if so required under applicable guidelines, policies or regulations thereof) to dissolve the Trust and distribute the Debentures to Securityholders in exchange for the Preferred Securities in accordance with Section 9.4;
- (c) the redemption of all of the Preferred Securities in connection with the redemption of all of the Debentures (whether upon a Debenture Redemption Date or the maturity of the Debenture); or
- (d) an order for dissolution of the Trust shall have been entered by a court of competent jurisdiction.

9.3 Termination.

The respective obligations and responsibilities of the Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Securityholders upon the liquidation of the Trust pursuant to Section 9.4, or upon the redemption of all of the Trust Securities pursuant to Section 4.2, of all amounts required to be distributed hereunder upon the final payment of the Trust Securities; (b) the payment of any expenses owed by the Trust; (c) the discharge of all administrative duties of the Administrative Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders; and (d) the filing of a Certificate of Cancellation by an Administrative Trustee under the Delaware Business Trust Act.

9.4 Liquidation.

- (a) If an Early Termination Event specified in clause (a), (b), or (d) of Section 9.2 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 9.4(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 60 days prior to 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 shall no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange shall be deemed to represent a Like Amount of Debentures; and
 - (iii) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for Debentures, or, if Section 9.4(d) applies, receive a Liquidation Distribution, as the Administrative Trustees or the Property Trustee shall deem appropriate.
- (b) Except where Section 9.2(c) or 9.4(d) applies, in order to effect the liquidation of the Trust and distribution of the Debentures to Securityholders, the Property Trustee shall establish a record date for such distribution (which shall be not more than 45 days prior to the Liquidation Date) and, 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 Trust Securities Certificates.
- (c) Except where Section 9.2(c) or 9.4(d) applies, after the Liquidation Date, (i) the Trust Securities shall no longer be deemed to be outstanding; (ii) certificates representing a Like Amount of Debentures shall be issued to Holders of Trust Securities Certificates upon surrender of such certificates to the Administrative Trustees or their agent for exchange; (iii) the Depositor shall use its reasonable efforts to have the Debentures listed on the Nasdaq National Market or on such other securities exchange or other organization as the Preferred Securities are then listed or traded; (iv) any Trust Securities Certificates not so surrendered for exchange shall 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 Trust Securities Certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal shall be made to Holders of Trust Securities Certificates with respect to such Debentures); and (v) all rights of Securityholders holding Trust Securities shall cease,

except the right of such Securityholders to receive Debentures upon surrender of Trust Securities Certificates.

- (d) In the event that, notwithstanding the other provisions of this Section 9.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Debentures in the manner provided herein is determined by the Property Trustee not to be practical, the Trust Property shall be liquidated, and the Trust shall be wound-up by the Property Trustee in such manner as the Property Trustee determines. In such event, on the date of the winding up of the Trust, Securityholders shall 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 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 shall 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.

9.5 Mergers, Consolidations, Amalgamations or Replacements of the Trust.

The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other Person, except pursuant to this Section 9.5. At the request of the Depositor, with the consent of the Administrative Trustees and without the consent of the Holders of the Preferred Securities, the Property Trustee or the Delaware Trustee, the Trust may merge with or into, consolidate, amalgamate, be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any state; provided, that (i) such successor entity either (a) expressly assumes all of the obligations of the Trust with respect to the Preferred Securities; or (b) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Preferred Securities rank in priority with respect to distributions and payments upon liquidation, redemption and otherwise; (ii) the Depositor expressly appoints a trustee of such successor entity possessing substantially the same powers and duties as the Property Trustee as the holder of the Debentures; (iii) the Successor Securities are listed or traded, or any Successor Securities shall be listed or traded upon notification of issuance, on any national securities exchange or other organization on which the Preferred Securities are then listed, if any; (iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities (including any

Successor Securities) in any material respect; (v) such successor entity has a purpose substantially identical to that of the Trust; (vi) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Depositor has received an Opinion of Counsel to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Preferred Securities (including any Successor Securities) in any material respect; and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor such successor entity shall be required to register as an "investment company" under the Investment Company Act; and (vii) the Depositor 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 Guarantee, the Debentures, this Trust Agreement and the Expense Agreement. For purposes of this Section 9.5, any such consolidation, merger, sale, conveyance, transfer or other disposition as a result of which (a) the Depositor is not the surviving Person, and (b) the same Person is not both (i) the primary obligor in respect of the Debentures and (ii) the Guarantor under that certain Preferred Securities Guarantee Agreement of even date herewith (the "Guarantee") between the Depositor and First Union Trust Company, National Association, shall be deemed to constitute a replacement of the Trust by a successor entity; provided further that, notwithstanding the foregoing, in the event that upon the consummation of such a consolidation, merger, sale, conveyance, transfer or other disposition, the parent company (if any) of the Depositor, or its successor, is a bank holding company or financial holding company or comparably regulated financial institution, such parent company shall guarantee the obligations of the Trust (and any successor thereto) under the Preferred Securities (including any Successor Securities) at least to the extent provided by the Guarantee, the Debentures, the Trust Agreement and the Expense Agreement. Notwithstanding the foregoing, the Trust shall not, except with the consent of holders of 100% in Liquidation Amount of the Preferred Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other Person or permit any other Person to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger or replacement would cause the Trust or the successor entity to be classified as other than a grantor trust for United States federal income tax purposes.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Limitation of Rights of Securityholders.

The death or incapacity of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Trust Agreement, nor entitle the legal representatives or heirs of such Person or any Securityholder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding-up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

10.2 Amendment.

- (a) This Trust Agreement may be amended from time to time by the Trustees and the Depositor, without the consent of any Securityholders, (i) as provided in Section 8.11 with respect to acceptance of appointment by a successor Trustee; (ii) to cure any ambiguity, correct or supplement any provision herein or therein which may be inconsistent with any other provision herein or therein, or to make any other provisions with respect to matters or questions arising under this Trust Agreement, that shall not be inconsistent with the other provisions of this Trust Agreement; or (iii) to modify, eliminate or add to any provisions of this Trust Agreement to such extent as shall be necessary to ensure that the Trust shall be classified for United States federal income tax purposes as a grantor trust at all times that any Trust Securities are outstanding or to ensure that the Trust shall not be required to register as an "investment company" under the Investment Company Act; or (iv) to reduce or increase the Liquidation Amount per Trust Security and simultaneously to correspondingly increase or decrease the number of Trust Securities issued and Outstanding solely for the purpose of maintaining the eligibility of the Preferred Securities for quotation or listing on any national securities exchange or other organization on which the Preferred Securities are then quoted or listed (including, if applicable, the Nasdaq National Market); provided, however, that in the case of clause (ii), such action shall not adversely affect in any material respect the interests of any Securityholder, and provided further, that in the case of clause (iv) the aggregate Liquidation Amount of the Trust Securities Outstanding upon completion of any such reduction must be the same as the aggregate Liquidation Amount of the Trust Securities Outstanding immediately prior to such reduction or increase; and any amendments of this Trust Agreement shall become effective when notice thereof is given to the Securityholders (or in the case of an amendment pursuant to clause (iv), as of the date specified in the notice).
- (b) Except as provided in Section 6.1(c) or Section 10.2(c) hereof, any provision of this Trust Agreement may be amended by the Trustees and the Depositor (i) with the consent of Trust Securityholders representing not less than a majority (based upon Liquidation Amounts) of the Trust Securities then Outstanding; and (ii) upon 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 shall not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status of an "investment company" under the Investment Company Act.
- (c) In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Securityholder, this 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 Securityholder to institute suit for the enforcement of any such payment on or after such date; notwithstanding any other provision herein, without the unanimous consent of the Securityholders this paragraph (c) of this Section 10.2 may not be amended.

- (d) Notwithstanding any other provisions of this Trust Agreement, no Trustee shall enter into or consent to any amendment to this Trust Agreement which would cause the Trust to fail or cease to qualify for the exemption from status of an "investment company" under the Investment Company Act or to fail or cease to be classified as a grantor trust for United States federal income tax purposes.
- (e) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Depositor, this Trust Agreement may not be amended in a manner which imposes any additional obligation on the Depositor.
- (f) In the event that any amendment to this Trust Agreement is made, the Administrative Trustees shall promptly provide to the Depositor a copy of such amendment.
- (g) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Trust Agreement which affects its own rights, duties or immunities under this Trust Agreement. The Property Trustee shall be entitled to receive an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Trust Agreement has been effected in compliance with this Trust Agreement.

10.3 Severability.

In case any provision in this Trust Agreement or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.4 Governing Law.

THIS TRUST AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE SECURITYHOLDERS, THE TRUST AND THE TRUSTEES WITH RESPECT TO THIS TRUST AGREEMENT AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF).

10.5 Payments Due on Non-Business Day.

If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding

day which is a Business Day, except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as though made on the date fixed for such payment, and no distribution shall accumulate thereon for the period after such date.

10.6 Successors.

This Trust Agreement shall be binding upon and shall inure to the benefit of any successor to the Depositor, the Trust or the Relevant Trustee(s), including any successor by operation of law. Except in connection with a consolidation, merger or sale involving the Depositor that is permitted under Article IX of the Indenture and pursuant to which the assignee agrees in writing to perform the Depositor's obligations hereunder, the Depositor shall not assign its obligations hereunder.

10.7 Headings.

The Article and Section headings are for convenience only and shall not affect the construction of this Trust Agreement.

10.8 Reports, Notices and Demands.

Any report, notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Securityholder or the Depositor may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Preferred Securityholder, to such Preferred Securityholder as such Securityholder's name and address may appear on the Securities Register; and (b) in the case of the Common Securityholder or the Depositor, to First Merchants Corporation, 200 East Jackson Street, Post Office Box 792, Muncie, Indiana 47308, Attention: Larry R. Helms, Esq., Senior Vice President & General Counsel. Any notice to Preferred Securityholders shall also be given to such owners as have, within two years preceding the giving of such notice, filed their names and addresses with the Property Trustee for that purpose. Such notice, demand or other communication to or upon a Securityholder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission.

Any notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon the Trust, the Property Trustee or the Administrative Trustees shall be given in writing addressed (until another address is published by the Trust) as follows: (a) with respect to the Property Trustee to One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration, Attention: Corporate Trust Trustee Administration; (b) with respect to the Delaware Trustee, to One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration; and (c) with respect to the Administrative Trustees, to them at the address above for notices to the Depositor, marked "Attention: Administrative Trustees of First Merchants Corporation Trust [I/II/III]." Such notice, demand or other communication to or upon the Trust or the Property Trustee shall be deemed to have been

sufficiently given or made only upon actual receipt of the writing by the Trust or the Property Trustee.

10.9 Agreement Not to Petition.

Each of the Trustees and the Depositor agree for the benefit of the Securityholders that, until at least one year and one day after the Trust has been terminated in accordance with Article IX, they shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, insolvency, reorganization or other similar law (including, without limitation, the United States Bankruptcy Code of 1978, as amended) (collectively, "Bankruptcy Laws") or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. In the event the Depositor or any of the Trustees takes action in violation of this Section 10.9, the Property Trustee agrees, for the benefit of Securityholders, that at the expense of the Depositor (which expense shall be paid prior to the filing), it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Depositor or such Trustee against the Trust or the commencement of such action and raise the defense that the Depositor or such Trustee has agreed in writing not to take such action and should be stopped and precluded therefrom. The provisions of this Section 10.9 shall survive the termination of this Trust Agreement.

10.10 Trust Indenture Act; Conflict with Trust Indenture Act.

- (a) This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions.
- (b) The Property Trustee shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act.
- (c) If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Trust Agreement by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Trust Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Trust Agreement as so modified or to be excluded, as the case may be.
- (d) The application of the Trust Indenture Act to this Trust Agreement shall not affect the nature of the Trust Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

10.11 Acceptance of Terms of Trust Agreement, Guarantee and Indenture.

THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A SECURITYHOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE SECURITYHOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT AND AGREEMENT TO

THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH SECURITYHOLDER AND SUCH OTHERS THAT THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH SECURITYHOLDER AND SUCH OTHERS.

10.12 Counterparts.

This Trust Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, and all of which counterparts together shall constitute one and the same agreement.

10.13 Exchange Act Obligations.

For so long as the Trust Securities shall remain outstanding, Depositor shall fulfill all reporting and filing obligations under the Securities Exchange Act of 1934, as amended, as applicable to companies having a class of securities registered under Section 12(b) or 12(g) thereunder.

[Signatures to follow.]

FIRST MERCHANTS CORPORATION,
as Depositor

By: -----
Name: -----
Title: -----

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Property Trustee and Delaware Trustee

By: -----
Name: -----
Title: -----

Michael L. Cox,
as Administrative Trustee

Larry R. Helms, Esq.,
as Administrative Trustee

Mark K. Hardwick,
as Administrative Trustee

CERTIFICATE OF TRUST

OF

FIRST MERCHANTS CAPITAL TRUST [I/II/III]

This Certificate of Trust is being executed as of December __, 2001 for the purposes of organizing a business trust pursuant to the Delaware Business Trust Act, 12 Del. C.ss.ss.3801 et seq. (the "Act").

The undersigned hereby certifies as follows:

- 1. Name. The name of the business trust is "First Merchants Capital Trust [I/II/III]" (the "Trust").
- 2. Delaware Trustee. The name and business address of the Delaware trustee of the Trust meeting the requirements of Section 3807 of the Act are as follows:

First Union Trust Company, National Association
 One Rodney Square
 920 King Street
 Suite 102
 Wilmington, Delaware 19801
 Attention: Corporate Trust Trustee Administration

- 3. Effective. This Certificate of Trust shall be effective immediately upon filing in the Office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned being all of the trustees of the Trust, have duly executed this Certificate of Trust as of the day and year first above written.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION
as Delaware Trustee

By: _____
 Name: _____
 Title: _____

ADMINISTRATIVE TRUSTEE

 Michael L. Cox

ADMINISTRATIVE TRUSTEE

Larry R. Helms, Esq.

ADMINISTRATIVE TRUSTEE

Mark K. Hardwick

THIS CERTIFICATE IS NOT TRANSFERABLE
EXCEPT AS DESCRIBED IN THE TRUST AGREEMENT AS DEFINED BELOW

Certificate Number _____ Number of Common Securities _____

Certificate Evidencing Common Securities

of

First Merchants Capital Trust [I/II/III]

Common Securities

(liquidation amount \$[_____] per Common Security)

FIRST MERCHANTS CAPITAL TRUST [I/II/III], a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that FIRST MERCHANTS CORPORATION (the "Holder") is the registered owner of _____ (_____) common securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated the Common Securities (liquidation amount \$[_____] per Common Security) (the "Common Securities"). Except as provided in Section 5.10 of the Trust Agreement (as defined below), the Common Securities are not transferable, to the fullest extent permitted below, and any attempted prohibited transfer hereof shall be void. The designations, rights, privileges, restrictions, preferences, and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement dated as of [_____], 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 therein. The Trust shall furnish a copy of the Trust Agreement to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

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

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed this certificate this [___] day of [_____].

ADMINISTRATIVE TRUSTEE

By: _____
Name: _____

AGREEMENT AS TO EXPENSES AND LIABILITIES

AGREEMENT AS TO EXPENSES AND LIABILITIES (this "Agreement") dated as of [_____], between FIRST MERCHANTS CORPORATION, an Indiana corporation (the "Company"), and FIRST MERCHANTS CAPITAL TRUST [I/II/III], a Delaware business trust (the "Trust").

RECITALS

WHEREAS, the Trust intends to issue its common securities (the "Common Securities") to, and receive ____% Junior Subordinated Debentures (the "Debentures") from, the Company and to issue and sell First Merchants Capital Trust [I/II/III] [___]% Cumulative Trust Preferred Securities (the "Preferred Securities") with such powers, preferences and special rights and restrictions as are set forth in the Amended and Restated Trust Agreement dated as of [_____], as the same may be amended from time to time (the "Trust Agreement");

WHEREAS, the Company shall directly or indirectly own all of the Common Securities of the Trust and shall issue the Debentures;

NOW, THEREFORE, in consideration of the purchase by each holder of the Preferred Securities, which purchase the Company hereby agrees shall benefit the Company and which purchase the Company acknowledges shall be made in reliance upon the execution and delivery of this Agreement, the Company, including in its capacity as holder of the Common Securities, and the Trust hereby agree as follows:

ARTICLE I

1.1 Guarantee by the Company.

Subject to the terms and conditions hereof, the Company, including in its capacity as holder of the Common Securities, hereby irrevocably and unconditionally guarantees to each person or entity to whom the Trust is now or hereafter becomes indebted or liable (the "Beneficiaries") the full payment when and as due, of any and all Obligations (as hereinafter defined) to such Beneficiaries. As used herein, "Obligations" means any costs, expenses or liabilities of the Trust other than obligations of the Trust to pay to holders of any Preferred Securities or other similar interests in the Trust the amounts due such holders pursuant to the terms of the Preferred Securities or such other similar interests, as the case may be. This Agreement is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

1.2 Term of Agreement.

This Agreement shall terminate and be of no further force and effect upon the later of (a) the date on which full payment has been made of all amounts payable to all holders of all the Preferred Securities (whether upon redemption, liquidation, exchange or otherwise); and (b) the date on which there are no Beneficiaries remaining; provided, however, that this Agreement shall continue to be

effective or shall be reinstated, as the case may be, if at any time any holder of Preferred Securities or any Beneficiary must restore payment of any sums paid under the Preferred Securities, under any obligation, under the Preferred Securities Guarantee Agreement dated the date hereof by the Company and First Union Trust Company, National Association as guarantee trustee or under this Agreement for any reason whatsoever. This Agreement is continuing, irrevocable, unconditional and absolute.

1.3 Waiver of Notice.

The Company hereby waives notice of acceptance of this Agreement and of any obligation to which it applies or may apply, and the Company hereby waives presentment, demand for payment, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

1.4 No Impairment.

The obligations, covenants, agreements and duties of the Company under this Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the extension of time for the payment by the Trust of all or any portion of the Obligations or for the performance of any other obligation under, arising out of, or in connection with, the Obligations;
- (b) any failure, omission, delay or lack of diligence on the part of the Beneficiaries to enforce, assert or exercise any right, privilege, power or remedy conferred on the Beneficiaries with respect to the Obligations or any action on the part of the Trust granting indulgence or extension of any kind; or
- (c) 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 Trust or any of the assets of the Trust.

There shall be no obligation of the Beneficiaries to give notice to, or obtain the consent of, the Company with respect to the happening of any of the foregoing.

1.5 Enforcement.

A Beneficiary may enforce this Agreement directly against the Company, and the Company waives any right or remedy to require that any action be brought against the Trust or any other person or entity before proceeding against the Company.

ARTICLE II

2.1 Binding Effect.

All guarantees and agreements contained in this Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Company and shall inure to the benefit of the Beneficiaries.

2.2 Amendment.

So long as there remains any Beneficiary or any Preferred Securities of any series are outstanding, this Agreement shall not be modified or amended in any manner adverse to such Beneficiary or to any of the holders of the Preferred Securities.

2.3 Notices.

Any notice, request or other communication required or permitted to be given hereunder shall be given in writing by delivering the same by facsimile transmission (confirmed by mail), telex, or by registered or certified mail, addressed as follows (and if so given, shall be deemed given when mailed or upon receipt of an answer back, if sent by facsimile):

If to the Company: First Merchants Corporation
200 East Jackson Street
Post Office Box 792
Muncie, Indiana 47308
Fax: (765) 741-7283
Attention: Larry R. Helms, Esq.,
Senior Vice President & General Counsel

If to the Trust: First Union Trust Company, National Association
One Rodney Square
920 King Street, Suite 102
Wilmington, DE 19801
Fax: (302) 888-7544
Attention: Corporate Trust Trustee Administration

2.4 Governing Law.

This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware (without regard to conflict of laws principles).

THIS AGREEMENT is executed as of the day and year first above written.

FIRST MERCHANTS CORPORATION

By:

Name:

Title:

FIRST MERCHANTS CAPITAL TRUST [I/II/III]

By: _____, as Administrative Trustee

Name: _____

Certificate Number _____ Number of Preferred Securities _____

Certificate Evidencing Preferred Securities
of
First Merchants Capital Trust [I/II/III]_____% Cumulative Trust Preferred Securities
(Liquidation Amount \$[_____] per Preferred Security)

CUSIP No. _____

First Merchants Capital Trust [I/II/III], a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that [_____] (the "Holder") is the registered owner of [_____] preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated the [_____] % Cumulative Trust Preferred Securities (liquidation amount \$[_____] 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 as provided in Section 5.4 of the Trust Agreement (as defined herein). The designations, rights, privileges, restrictions, preferences, and other terms and provisions of the Preferred Securities are set forth in, and this Certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement as of [_____] , as the same may be amended from time to time (the "Trust Agreement"), including the designation of the terms of Preferred Securities as set forth therein. The Holder is entitled to the benefits of the Preferred Securities Guarantee Agreement entered into by First Merchants Corporation, an Indiana corporation, and First Union Trust Company, National Association, as guarantee trustee, dated as of [_____] , as the same may be amended from time to time (the "Guarantee"), to the extent provided therein. The Trust shall furnish a copy of the Trust Agreement and the Guarantee to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

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

Unless the Certificate of Authentication has been manually executed by the Authentication Agent, this Certificate is not valid or effective.

IN WITNESS WHEREOF, the Administrative Trustees of the Trust have executed this Certificate this [___] day of [_____].

FIRST MERCHANTS CAPITAL TRUST [I/II/III]

By: _____, as Administrative Trustee
Name: _____

By: _____, as Administrative Trustee
Name: _____

By: _____, as Administrative Trustee
Name: _____

LEGEND
FOR CERTIFICATES EVIDENCING
GLOBAL PREFERRED SECURITIES ONLY:

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to First Merchants Capital Trust [I/II/III] or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

[FORM OF REVERSE OF CERTIFICATE]

The Trust will furnish without charge to any registered owner of Preferred Securities who so requests, a copy of the Trust Agreement and the Guarantee. Any such request should be in writing and addressed to First Merchants Capital Trust [I/II/III], c/o First Union Trust Company, National Association, One Rodney Square, 920 King Street, Suite 102, Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration, or to the Registrar named on the face of this Certificate.

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

TEN COM-- as tenants in common	UNIF GIFT MIN ACT-- under Uniform
TEN ENT-- as tenants by the entireties	Gift to Minors
JT TEN-- as joint tenants with right of survival	Act and not as tenants

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

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

(Please insert social security or other identifying number of assignee)

(insert address and zip code of assignee)

the within Certificate and all rights and interests represented by the Preferred Securities evidenced thereby, and hereby irrevocably constitutes and appoints

attorney to transfer the said Preferred Securities on the books of the within-named Trust with full power of substitution in the premises.

Dated: _____

Signature: _____

Note: The signature(s) to this assignment must correspond with the name(s) as written upon the face of this Certificate in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed:

NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" that is a member or participant in a "signature guarantee program" (i.e., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program).

FORM OF PREFERRED SECURITIES CERTIFICATE AUTHENTICATION

This is one of the ____% Cumulative Trust Preferred Securities referred to in the within-mentioned Amended and Restated Trust Agreement.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Authentication Agent and Registrar

By: _____
Name: _____
Title: _____

FIRST MERCHANTS CORPORATION

AND

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION.
AS INDENTURE TRUSTEE

INDENTURE

JUNIOR SUBORDINATED DEBT SECURITIES, ISSUABLE IN SERIES

Dated as of [_____], 2001

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.....	6.11
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311(a).....	6.14
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311(c).....	Not Applicable
312(a).....	4.1
.....	4.2(a)
312(b).....	4.2(c)
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313(a).....	4.4(a)
313(b).....	4.4(b)
313(c).....	4.4(a)
.....	4.4(b)
313(d).....	4.4(c)
314(a).....	4.3(a)
314(b).....	Not Applicable
314(c).....	12.7
314(d).....	Not Applicable
314(e).....	12.7
314(f).....	Not Applicable
315(a).....	6.1(a)
.....	6.3
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315(e).....	5.7
316(a).....	1.1
.....	5.6
316(b).....	5.4(b)
316(c).....	7.1(b)
317(a).....	5.2
317(b).....	3.3
318(a).....	12.9

Note: This reconciliation and tie sheet shall not, for any purpose, be deemed to be a part of the Indenture

INDENTURE

THIS INDENTURE, dated as of [_____], 2001 between FIRST MERCHANTS CORPORATION, an Indiana corporation (the "Company") and FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION (the "Trustee");

RECITALS

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of securities from time to time to be issued in one or more series (hereinafter referred to as the "Debentures") up to such principal amount or amounts as may from time to time be authorized, the form and substance of such Debentures and the terms, provisions and conditions thereof to be set forth as provided in this Indenture;

WHEREAS, the Company has requested that the Trustee execute and deliver this Indenture;

WHEREAS, all requirements necessary to make this Indenture a valid instrument in accordance with its terms have been performed, and the execution and delivery of this Indenture have been duly authorized in all respects;

WHEREAS, to provide the terms and conditions upon which the Debentures are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, in consideration of the premises, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the holders from time to time of the Debentures or a series thereof, as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions of Terms.

The terms defined in this Section 1.1 (except as in this Indenture or in any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.1 and shall include the plural as well as the singular. All other terms used in this Indenture that are defined in the Trust Indenture Act, or that are by reference in the Trust Indenture Act defined in the Securities Act (except as herein or in any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this instrument. All accounting terms used herein and not

expressly defined shall have the meanings assigned to such terms in accordance with Generally Accepted Accounting Principles. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture and not any Article, Section or other subdivision headings.

"Additional Senior Obligations" means all indebtedness of the Company whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements; provided, however, that Additional Senior Obligations does not include claims in respect of Senior Debt or Subordinated Debt or obligations which, by their terms, are expressly stated to be not superior in right of payment to the Debentures or to rank pari passu in right of payment with the Debentures. For purposes of this definition, "claim" shall have the meaning assigned thereto in Section 101(4) of the United States Bankruptcy Code of 1978, as amended.

"Administrative Trustees" shall have the meaning set forth in the Trust Agreement.

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

"Authenticating Agent" means an authenticating agent with respect to the Debentures appointed by the Trustee pursuant to Section 2.10.

"Bankruptcy Law" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

"Board of Directors" means the Board of Directors of the Company or any duly authorized committee of such Board or any other duly designated officers of the Company.

"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.

"Business Day" means, with respect to the Debentures, any day other than a Saturday or a Sunday or a day on which federal or state banking institutions in the Borough of Manhattan, The City of New York, are authorized or required by law, executive order or regulation to close, or a day on which the Corporate Trust Office of the Trustee or the Property Trustee is closed for business.

"Certificate" means a certificate signed by the principal executive officer, the principal financial officer, the principal accounting officer, the treasurer or any vice president of the Company. The Certificate need not comply with the provisions of Section 12.7.

"Certificate of Authentication" shall mean the certificate issued by the Trustee or the Authenticating Agent as to the form of a Debenture issued under the Indenture.

"Commission" means the Securities and Exchange Commission 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 a Trust which rank pari passu with Preferred Securities issued by such Trust; provided, however, that upon the occurrence of an Event of Default, the rights of holders of Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights of holders of Preferred Securities.

"Company" means First Merchants Corporation, a corporation duly organized and existing under the laws of the State of Indiana, and, subject to the provisions of Article IX, shall also include its successors and assigns.

"Corporate Trust Office" means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at One Rodney Square, 920 King Street, Suite 102 Wilmington, Delaware 19801, Attention: Corporate Trust Trustee Administration.

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

"Debentures" shall have the meaning set forth in the Recitals hereto.

"Debentureholder," "holder of Debentures," "registered holder," or other similar term, means the Person or Persons in whose name or names a particular Debenture shall be registered on the books of the Company or the Trustee kept for that purpose in accordance with the terms of this Indenture.

"Debenture Register" shall have the meaning set forth in Section 2.5(b).

"Debenture Registrar" shall have the meaning set forth in Section 2.5(b).

"Debt" means with respect to any Person, whether recourse is to all or a portion of the assets of such Person and whether or not contingent, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; and (vi) and every obligation of the type referred to in clauses (i) through (v) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable, directly or indirectly, as obligor or otherwise.

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

"Defaulted Interest" shall have the meaning set forth in Section 2.3.

"Depository" shall mean, with respect to Debentures of any series, for which the Company shall determine that such Debentures will be issued as a Global Debenture, 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 2.11.

"Direct Action" shall have the meaning set forth in Section 5.8.

"Event of Default" means, with respect to the Debentures, any event specified in Section 5.1, which has 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 amended, as in effect at the date of execution of this Indenture.

"Federal Reserve" means the Board of Governors of the Federal Reserve System.

"Generally Accepted Accounting Principles" means such accounting principles as are generally accepted at the time of any computation required hereunder.

"Global Debenture" means, with respect to any series of Debentures, a Debenture of such series 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.

"Governmental 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 that, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such Governmental Obligation or a specific payment of principal of or interest on any such Governmental Obligation held by such custodian for the account of the holder of such depository receipt; provided, however, 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 Governmental Obligation or the specific payment of principal of or interest on the Governmental Obligation evidenced by such depository receipt.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into in accordance with the terms hereof and that may include the terms of a particular series of Debentures established as contemplated by Section 2.2.

"Interest Payment Date," when used with respect to any installment of interest on a Debenture of any particular series means the date specified in such Debenture or in a Board Resolution or in an indenture supplemental hereto with respect to the Debentures as the fixed date on which an installment of interest with respect to the Debentures is due and payable.

"Officers' Certificate" means a certificate signed by the President or an Executive Vice President and by the Chief Financial Officer or the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company that is delivered to the Trustee in accordance with the terms hereof. Each such certificate shall include the statements provided for in Section 12.7, if and to the extent required by the provisions thereof.

"Opinion of Counsel" means an opinion in writing of independent, outside legal counsel for the Company that is delivered to the Trustee in accordance with the terms hereof. Each such opinion shall include the statements provided for in Section 12.7, if and to the extent required by the provisions thereof.

"Outstanding," when used in reference to Debentures of any particular series, means, subject to the provisions of Section 7.4, as of any particular time, all such Debentures theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Debentures theretofore canceled by the Trustee or any paying agent, or delivered to the Trustee or any paying agent for cancellation or that have previously been canceled; (b) Debentures or portions thereof for the payment or redemption of which moneys or Governmental Obligations 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, however, that if such Debentures or portions of such Debentures are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided herein, or provision satisfactory to the Trustee shall have been made for giving such notice; and (c) Debentures in lieu of or in substitution for which other Debentures shall have been authenticated and delivered pursuant to the terms of Section 2.5; provided, however, that in determining whether the holders of the requisite percentage of Debentures have given any request, notice, consent or waiver hereunder, Debentures held by the Company or any Affiliate of the Company shall not be included; provided, further, that the Trustee shall be protected in relying upon any request, notice, consent or waiver unless a Responsible Officer of the Trustee shall have actual knowledge that the holder of such Debenture is the Company or an Affiliate thereof.

"Person" means any individual, corporation, partnership, joint-venture, joint-stock company, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Predecessor Debenture" of any particular Debenture means every previous Debenture evidencing all or a portion of the same debt as that evidenced by such particular Debenture; and, for the purposes of this definition, any Debenture authenticated and delivered under Section 2.7 in lieu of a lost, destroyed or stolen Debenture shall be deemed to evidence the same debt as the lost, destroyed or stolen Debenture.

"Preferred Securities" means undivided beneficial interests in the assets of a Trust which rank *pari passu* with Common Securities issued by such Trust; provided, however, that upon the

occurrence of an Event of Default, the rights of holders of Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights of holders of Preferred Securities.

"Preferred Securities Guarantee" means any guarantee that the Company may enter into with the Trustee or other Persons that operates directly or indirectly for the benefit of holders of Preferred Securities.

"Property Trustee" has the meaning set forth in the Trust Agreement of the applicable Trust.

"Responsible Officer" when used with respect to the Trustee means any officer within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture, including any vice president, any assistant vice president, any assistant secretary or any other officer or assistant officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with the particular subject.

"Securities Act," means the Securities Act of 1933, as amended, as in effect at the date of execution of this instrument.

"Senior Debt" means the principal of (and premium, if any) and interest, if any (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not such claim for post-petition interest is allowed in such proceeding), on Debt, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless, in the instrument creating or evidencing the same or pursuant to which the same is outstanding, it is provided that such obligations are not superior in right of payment to the Debentures or to other Debt which is pari passu with, or subordinated to, the Debentures, provided, however, that Senior Debt shall not be deemed to include (i) any Debt of the Company which when incurred and without respect to any election under section 1111(b) of the United States Bankruptcy Code of 1978, as amended, was without recourse to the Company; (ii) any Debt owed to any employee of the Company; (iii) any Debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of such Debt by the holders of the Debentures as a result of the subordination provisions of this Indenture would be greater than they otherwise would have been as a result of any obligation of such holders to pay amounts over to the obligees on such trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which such Debt is subject; and (iv) any Debt which constitutes Subordinated Debt.

"Senior Indebtedness" shall have the meaning set forth in Section 13.1.

"Subordinated Debt" means the principal of (and premium, if any) and interest, if any (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not such claim for post-petition interest is allowed in such proceeding), on Debt, whether incurred on or prior to the date of this Indenture or thereafter incurred, which is by its terms expressly provided to be junior and subordinate to Senior Debt of the Company (other than the Debentures); provided, however, that Subordinated Debt will not be

deemed to include (i) any Debt of the Company which when incurred and without respect to any election under section 1111(b) of the United States Bankruptcy Code of 1978, as amended, was without recourse to the Company; (ii) any Debt owed to any employee of the Company; (iii) any Debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of such Debt by the holders of the Subordinated Debentures as a result of the subordination provisions of this Indenture would be greater than they otherwise would have been as a result of any obligation of such holders to pay amounts over to the obligees on such trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which such Debt is subject; (iv) any Debt which constitutes Senior Debt; and (v) any Debt of the Company under debt securities (and guarantees in respect of these debt securities) initially issued to any trust, or a trustee of a trust, partnership or other entity affiliated with the Company that is, directly or indirectly, a financing vehicle of the Company in connection with the issuance by that entity of preferred securities or other securities which are intended to qualify for Tier 1 capital treatment.

"Subsidiary" means, with respect to any Person, (i) any corporation at least a majority of whose outstanding Voting Stock shall at the time be 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, limited liability company, joint venture, trust 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.

"Trust" means each statutory business trust created for the purpose of issuing its undivided beneficial interests in connection with the issuance of Debentures under this Indenture.

"Trust Agreement" with respect to a Trust, means the governing instrument of such Trust, as amended from time to time.

"Trustee" means First Union Trust Company, National Association, and, subject to the provisions of Article VI, shall also include its successors and assigns, and, if at any time there is more than one Person acting in such capacity hereunder, "Trustee" shall mean each such Person.

"Trust Indenture Act," means the Trust Indenture Act of 1939, as amended, subject to the provisions of Sections 8.1, 8.2, and 9.1, as in effect at the date of execution of this instrument.

"Trust Securities" means the Common Securities and Preferred Securities, collectively.

"Voting Stock," as applied to stock of any Person, 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.

ARTICLE II

DEBENTURES

2.1 Forms Generally.

(a) The Debentures of each series shall be in substantially the form as established by or pursuant to a Board Resolution and as set forth in an Officer's Certificate of the Company or in one or more indentures supplemental hereto, in each case with appropriate insertions, omissions, substitutions, and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with any law or with any rules made pursuant thereto or with any rules of any securities exchange, all as may, consistently herewith, be determined by the officers of the Company executing such Debentures, as evidenced by their execution of the Debentures.

(b) The form of the Trustee's Certificate of Authentication shall be in substantially the following form:

This is one of the Debentures of the series designated therein referred to in the within-mentioned Indenture and [_____] Supplemental Indenture.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By:

Authorized Signatory

2.2 Amount Unlimited; Issuable in Series.

The aggregate principal amount of Debentures which may be authenticated and delivered under this Indenture is unlimited. The Debentures may be issued in one or more series up to the aggregate principal amount of securities of that series from time to time authorized by or pursuant to a Board Resolution of the Company or pursuant to one or more indentures supplemental hereto, subject, however, to subsection (c) of the definition of "Outstanding" in Section 1.1 and the following subsection (b) of this Section 2.2. Prior to the initial issuance of Debentures of any series, there shall be established in or pursuant to a Board Resolution of the Company and set forth in an Officers' Certificate of the Company or established in one or more indentures supplemental hereto:

(a) the title of the Debentures of the series (which shall distinguish the Debentures of the series from all other Debentures);

(b) any limit upon the aggregate principal amount of the Debentures of the series which may be authenticated and delivered under this Indenture (except for Debentures authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debentures of the series pursuant to the terms of this Indenture);

- (c) the date or dates on which the principal of and premium, if any, on the Debentures of the series is payable;
- (d) the rate or rates at which the Debentures of the series shall bear interest, if any, or the method by which such interest may be determined, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable or the manner of determination of such Interest Payment Dates and the record dates for the determination of holders to whom interest is payable on any such Interest Payment Dates;
- (e) the place or places where the principal of, and premium, if any, and any interest on Debentures of the series shall be payable;
- (f) the right, if any, to extend the interest payment periods and the duration of such extension;
- (g) the price or prices at which, the period or periods within which and the terms and conditions upon which Debentures of the series may be prepaid or redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;
- (h) the obligation, if any, of the Company to prepay, redeem, purchase or repay Debentures of the series pursuant to any sinking fund or analogous provisions or at the option of a Debentureholder thereof and the price or prices at which, and the period or periods within which, and the terms and conditions upon which, Debentures of the series shall be prepaid, redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;
- (i) the denominations in which Debentures of the series shall be issuable;
- (j) any Events of Default with respect to the Debentures of a particular series, if not set forth herein;
- (k) the form of the Debentures of the series including the form of the Certificate of Authentication of such series (which shall be consistent with Section 2.1(b));
- (l) any trustee, authenticating or paying agents, warrant agents, transfer agents or registrars with respect to the Debentures of such series;
- (m) whether the Debentures of the series shall be issued in whole or in part in the form of one or more Global Debentures and, in such case, the Depositary for such Global Debenture or Debentures, and whether beneficial owners of interests in any such Global Debentures may exchange such interests for other Debentures of such series in the manner provided in Section 2.5, and the manner and the circumstances under which and the place or places where any such exchanges may occur if other than in the manner provided in Section 2.5, and any other terms of the series relating to the global nature of the Global Debentures of such series and the exchange, registration or transfer thereof and the payment of any principal thereof, or interest or premium, if any, thereon; and
- (n) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Debentures of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such resolution of the Board of Directors or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution of the Company, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate of the Company setting forth the terms of the series.

2.3 Date and Denomination of Debentures.

The Debentures shall be issuable in such form and in such denominations as shall be specified as contemplated by Section 2.2. In the absence of any such specification with respect to the Debentures of any series, the Debentures of such series shall be issuable as registered Debentures without coupons and in the denominations of \$25 and any multiple thereof. The Debentures shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plans as the officers of the Company executing the same may determine with the approval of the Trustee as evidenced by the execution and authentication thereof.

Every Debenture shall be dated the date of its authentication, shall be payable on such dates and shall bear interest, if any, from the date set forth on the face of the Debenture, in each case, as contemplated by Section 2.2. The interest installment on any Debenture that is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Debentures of that series shall be paid to the Person in whose name said Debenture (or one or more Predecessor Debentures) is registered at the close of business on the regular record date for such interest installment. In the event that any Debenture of a particular series or portion thereof is called for redemption and the redemption date is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Debenture will be paid upon presentation and surrender of such Debenture as provided in Section 3.2.

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

(a) The Company may make payment of any Defaulted Interest on Debentures to the Persons in whose names such Debentures (or their respective Predecessor Debentures) 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 Debenture and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor

less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Debenture holder at his or her address as it appears in the Debenture 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 Debentures (or their respective Predecessor Debentures) are registered on such special record date and shall be no longer payable pursuant to the following clause (b).

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

Unless otherwise set forth in a Board Resolution of the Company or one or more indentures supplemental hereto establishing the terms of any series of Debentures pursuant to Section 2.2 hereof, the term "regular record date" as used in this Section with respect to a series of Debentures with respect to any Interest Payment Date for such series shall mean either the fifteenth day of the month in which an Interest Payment Date established for such series pursuant to Section 2.2 hereof shall occur, if such Interest Payment Date is the last day of a month, or the last day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.2 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

Subject to the foregoing provisions of this Section, each Debenture of a series delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Debenture of such series shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Debenture.

2.4 Execution and Authentications.

(a) The Debentures shall be signed on behalf of the Company by its President or one of its Vice Presidents or Chief Financial Officer or Treasurer, attested by its Secretary or one of its Assistant Secretaries. Signatures may be in the form of a manual or facsimile signature. The Company may use the facsimile signature of any Person who shall have been a President or Vice President thereof, or of any Person who shall have been a Secretary or Assistant Secretary thereof, notwithstanding the fact that at the time the Debentures shall be authenticated and delivered or disposed of such Person shall have ceased to be the President or a Vice President, or the Secretary or an Assistant Secretary, of the Company (and any such signature shall be binding on the Company). The Debentures may contain such notations, legends or endorsements required by law, stock exchange rule or usage. Each Debenture shall be dated the date of its authentication by the Trustee.

(b) A Debenture shall not be valid until authenticated manually by an authorized signatory of the Trustee, or by an Authenticating Agent. Such signature shall be conclusive evidence that the Debenture so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Debentures of any series executed by the Company to the Trustee for authentication, together with a written order of the Company for the authentication and delivery of such Debentures signed by its President or any Vice President and its Chief Financial Officer or the Treasurer or any Assistant Treasurer, and the Trustee in accordance with such written order shall authenticate and deliver such Debentures.

(d) In authenticating such Debentures and accepting the additional responsibilities under this Indenture in relation to such Debentures, the Trustee shall be entitled to receive, and (subject to Section 6.1) shall be fully protected in relying upon:

(i) a copy of any Board Resolution or Resolutions relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution, in each case certified by the Secretary or an Assistant Secretary of the Company;

(ii) an executed supplemental indenture, if any;

(iii) an Officers' Certificate setting forth the form and terms of the Debentures as required pursuant to Section 2.1 and Section 2.2, respectively; and

(iv) an Opinion of Counsel prepared in accordance with Section 12.7 which shall also state:

- (1) that the form of such Debentures has been established by or pursuant to a resolution of the Board of Directors or by supplemental indenture as permitted by Section 2.1 in conformity with the provisions of this Indenture;
- (2) that the terms of such Debentures have been established by or pursuant to a resolution of the Board of Directors or by supplemental indenture as permitted by Section 2.2 in conformity with the provisions of this Indenture;
- (3) that such Debentures, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company;
- (4) that all laws and requirements in respect of the execution and delivery by the Company of the Debentures have been complied with and that authentication and delivery of the Debentures by the Trustee will not violate the terms of the Indenture; and

(5) such other matters as the Trustee may reasonably request.

(e) The Trustee shall not be required to authenticate Debentures of any series, if the issue of such Debentures pursuant to this Indenture shall affect the Trustee's own rights, duties or immunities under such Debentures and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

2.5 Registration of Transfer and Exchange.

(a) Subject to Section 2.2(m), Debentures may be exchanged upon presentation thereof at the office or agency of the Company designated for such purpose in Wilmington, Delaware, or at the office of the Debenture Registrar, for other Debentures of the same series in authorized denominations, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section 2.5. In respect of any Debentures so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefor the Debenture or Debentures that the Debentureholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

(b) The Company shall keep, or cause to be kept, at its office or agency designated for such purpose in Wilmington, Delaware, or at the office of the Debenture Registrar or such other location designated by the Company a register or registers (herein referred to as the "Debenture Register") in which, subject to such reasonable regulations as the Debenture Registrar may prescribe, the Company shall register the Debentures and the transfers of Debentures as in this Article II provided and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Debentures and transfer of Debentures as herein provided shall initially be the Trustee and thereafter as may be appointed by the Company as authorized by Board Resolution (the "Debenture Registrar"). Upon surrender for transfer of any Debenture at the office or agency of the Company designated for such purpose, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Debenture or Debentures of the same series for a like aggregate principal amount. All Debentures presented or surrendered for exchange or registration of transfer, as provided in this Section 2.5, shall be accompanied (if so required by the Company or the Debenture Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Debenture Registrar, duly executed by the registered holder or by such holder's duly authorized attorney in writing.

(c) No service charge shall be made for any exchange or registration of transfer of Debentures, or issue of new Debentures in case of partial redemption, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.6 and Section 8.4 not involving any transfer.

(d) The Company shall not be required (i) to issue, exchange or register the transfer of any Debentures of the same series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of less than all the Outstanding Debentures of the same series and ending at the close of business on the day of such mailing; nor

(ii) to register the transfer of or exchange any Debentures or portions thereof called for redemption.

(e) Debentures may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Indenture. Any transfer or purported transfer of any Debenture not made in accordance with this Indenture shall be null and void.

2.6 Temporary Debentures.

Pending the preparation of definitive Debentures, the Company may execute, and the Trustee shall authenticate and deliver, temporary Debentures (printed, lithographed, or typewritten). Such temporary Debentures shall be substantially in the form of the definitive Debentures in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Debentures, all as may be determined by the Company. Every temporary Debenture shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Debentures. Without unnecessary delay the Company shall execute and shall furnish definitive Debentures and thereupon any or all temporary Debentures may be surrendered in exchange therefor (without charge to the holders), at the office or agency of the Company designated for the purpose in Wilmington, Delaware, or such other location designated by the Company, and the Trustee shall authenticate and such office or agency shall deliver in exchange for such temporary Debentures an equal aggregate principal amount of definitive Debentures, unless the Company advises the Trustee to the effect that definitive Debentures need not be executed and furnished until further notice from the Company. Until so exchanged, the temporary Debentures shall be entitled to the same benefits under this Indenture as definitive Debentures authenticated and delivered hereunder.

2.7 Mutilated, Destroyed, Lost or Stolen Debentures.

(a) In case any temporary or definitive Debenture shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon the Company's request the Trustee (subject as aforesaid) shall authenticate and deliver, a new Debenture bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Debenture, or in lieu of and in substitution for the Debenture so destroyed, lost, stolen or mutilated. In every case the applicant for a substituted Debenture shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of the applicant's Debenture and of the ownership thereof. The Trustee may authenticate any such substituted Debenture and deliver the same upon the written request or authorization of the President or any Vice President and the Chief Financial Officer or the Treasurer or any Assistant Treasurer of the Company. Upon the issuance of any substituted Debenture, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Debenture that has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Debenture, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debenture) if the applicant for such payment

shall furnish to the Company and the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Debenture and of the ownership thereof.

(b) Every replacement Debenture issued pursuant to the provisions of this Section 2.7 shall constitute an additional contractual obligation of the Company whether or not the mutilated, destroyed, lost or stolen Debenture shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debentures duly issued hereunder. All Debentures shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debentures, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

2.8 Cancellation.

All Debentures surrendered for the purpose of payment, redemption, exchange or registration of transfer shall, if surrendered to the Company or any paying agent, be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be canceled by it, and no Debentures shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On request of the Company at the time of such surrender, the Trustee shall deliver to the Company canceled Debentures held by the Trustee. In the absence of such request the Trustee may dispose of canceled Debentures in accordance with its standard procedures and deliver a certificate of disposition to the Company. If the Company shall otherwise acquire any of the Debentures, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Debentures unless and until the same are delivered to the Trustee for cancellation.

2.9 Benefit of Indenture.

Nothing in this Indenture or in the Debentures, express or implied, shall give or be construed to give to any Person, other than the parties hereto and the holders of the Debentures (and, with respect to the provisions of Article XIII, the holders of Senior Indebtedness) any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Debentures (and, with respect to the provisions of Article XIII, the holders of Senior Indebtedness).

2.10 Authenticating Agent.

(a) So long as any of the Debentures remain Outstanding there may be an Authenticating Agent for any or all such Debentures, which Authenticating Agent the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Debentures issued upon exchange, transfer or partial redemption thereof, and Debentures so authenticated shall be entitled to the benefits of this Indenture and shall be valid

and obligatory for all purposes as if authenticated by the Trustee hereunder. All references in this Indenture to the authentication of Debentures by the Trustee shall be deemed to include authentication by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation that has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and that is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by federal or state authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions, it shall resign immediately.

(b) 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 (and upon request by the Company shall) terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon resignation, termination or cessation of eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent acceptable to the Company. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder as if originally named as an Authenticating Agent pursuant hereto.

2.11 Global Debentures.

(a) If the Company shall establish pursuant to Section 2.2 that the Debentures of a particular series are to be issued as a Global Debenture, then the Company shall execute and the Trustee shall, in accordance with Section 2.4, authenticate and deliver, a Global Debenture that (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the outstanding Debentures of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "Except as otherwise provided in Section 2.11 of the Indenture, this Debenture may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."

(b) Notwithstanding the provisions of Section 2.5, the Global Debenture of a series may be transferred, in whole but not in part and in the manner provided in Section 2.5, only to another nominee of the Depository for such series or to a successor Depository for such series selected or approved by the Company or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the Debentures notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, this Section 2.11 shall no longer be applicable to the Debentures of such series and the Company will execute, and subject to Section 2.5, the Trustee will authenticate and deliver, the definitive Debentures of such series, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture of such series in exchange for such Global Debenture. In addition, the Company may at any time determine that the Debentures of any series shall no longer be represented by a Global Debenture and that the provisions of this Section 2.11 shall no longer apply to the Debentures of such series. In such event the Company will execute and, subject to Section 2.5, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver the definitive Debentures of

such series, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture of such series in exchange for such Global Debenture. Upon the exchange of the Global Debenture for such definitive Debentures, in authorized denominations, the Global Debenture shall be cancelled by the Trustee. Such definitive Debentures issued in exchange for the Global Debenture pursuant to this Section 2.11(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such definitive Debentures to the Depository for delivery to the Persons in whose names such definitive Debentures are so registered.

2.12 CUSIP Numbers.

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

ARTICLE III

PARTICULAR COVENANTS OF THE COMPANY

3.1 Payment of Principal and Interest.

The Company covenants and agrees for the benefit of each series of Debentures that it shall duly and punctually pay or cause to be paid the principal of and interest on the Debentures at the time and place and in the manner provided herein. Each such payment of the principal of and interest on the Debentures shall relate only to the Debentures, shall not be combined with any other payment of the principal of or interest on any other obligation of the Company, and shall be clearly and unmistakably identified as pertaining to the Debentures.

3.2 Maintenance of Agency.

So long as any of the Debentures remain Outstanding, the Company shall maintain, or shall cause to be maintained, an office or agency in Wilmington, Delaware, and at such other location or locations as may be designated as provided in this Section 3.2, where (i) Debentures of each series may be presented for payment; (ii) Debentures of each series may be presented as hereinabove authorized for registration of transfer and exchange; and (iii) notices and demands to or upon the Company in respect of the Debentures of each series and this Indenture may be given or served,

such designation to continue with respect to such office or agency until the Company shall, by written notice signed by its President or an Executive Vice President and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands. In addition to any such office or agency, the Company may from time to time designate one or more offices or agencies outside of Wilmington, Delaware, where the Debentures of each series may be presented for registration or transfer and for exchange in the manner provided herein, 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 shall give the Trustee prompt written notice of any such designation or rescission thereof.

3.3 Paying Agents.

(a) The Company shall be the initial paying agent. If the Company shall appoint one or more paying agents for the Debentures of any series, other than the Trustee, the Company shall cause each such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 3.3:

(i) that it shall hold all sums held by it as such agent for the payment of the principal of or interest on the Debentures of such series (whether such sums have been paid to it by the Company or by any other obligor of the Debentures of such series) in trust for the benefit of the Persons entitled thereto;

(ii) that it shall give the Trustee notice of any failure by the Company (or by any other obligor on the Debentures of such series) to make any payment of the principal of or interest on the Debentures of such series when the same shall be due and payable;

(iii) that it shall, at any time during the continuance of any failure referred to in the preceding paragraph (a)(ii) above, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent; and

(iv) that it shall perform all other duties of paying agent as set forth in this Indenture.

(b) If the Company shall act as its own paying agent with respect to the Debentures of any series, it shall on or before each due date of the principal of or interest on the Debentures of such series, set aside, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay such principal or interest so becoming due on the Debentures of such series until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee of such action, or any failure (by it or any other obligor on the Debentures of such series) to take such action. Whenever the Company shall have one or more paying agents for the Debentures of such series, it shall, prior to each due date of the principal of or interest on any Debentures of such series, deposit with the paying agent a sum sufficient to

pay the principal or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal or interest, and (unless such paying agent is the Trustee) the Company shall promptly notify the Trustee of this action or failure so to act.

(c) Notwithstanding anything in this Section 3.3 to the contrary, (i) the agreement to hold sums in trust as provided in this Section 3.3 is subject to the provisions of Section 10.3 and 10.4; and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge with respect to one or more or all of the series of Debentures hereunder or for any other purpose, pay, or direct any paying agent to pay, to the Trustee all sums held in trust for any such series by the Company or such paying agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such paying agent; and, upon such payment by any paying agent to the Trustee, such paying agent shall be released from all further liability with respect to such money.

3.4 Appointment to Fill Vacancy in Office of Trustee.

The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, shall appoint, in the manner provided in Section 6.11, a Trustee, so that there shall at all times be a Trustee hereunder.

3.5 Compliance with Consolidation Provisions.

The Company shall not, while any of the Debentures remain outstanding, consolidate with, or merge into, or merge into itself, or sell or convey all or substantially all of its property to any other company unless the provisions of Article IX hereof are complied with.

3.6 Limitation on Transactions.

If Debentures of any series are issued to a Trust or a Trustee of a Trust in connection with the issuance of Trust Securities by such Trust and (i) there shall have occurred any event that would constitute an Event of Default; (ii) the Company shall be in default with respect to any of its obligations under the Preferred Securities Guarantee relating to such Trust; or (iii) the Company shall have given notice of its election to defer payments of interest on such Debentures by extending the interest payment period as provided in this Indenture or any applicable supplement hereto and such period, or any extension thereof, shall be continuing, then (a) the Company shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than (A) dividends or distributions in common stock of the Company, or any declaration of a non-cash dividend in connection with the implementation of a shareholder 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, (B) purchases of common stock of the Company related to the rights under any of the Company's benefit plans for its directors, officers or employees, or (C) as a result of a reclassification of its capital stock into another class of its capital stock); and (b) the Company shall not make any payment of interest, principal or premium, if any, or repay, repurchase or redeem any debt securities issued by the Company which rank pari passu with or junior to the Debentures of such series or make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the

Debentures of such series; provided, however, that notwithstanding the foregoing the Company may make payments pursuant to its obligations under the Preferred Securities Guarantee relating to such Trust; and (c) the Company shall not redeem, purchase or acquire less than all of the outstanding Debentures of such series or any of the Preferred Securities relating to such Trust.

3.7 Covenants as to the Trusts.

In the event a series of Debentures is issued to a Trust or a trustee of such Trust in connection with the issuance of Trust Securities by such Trust, for so long as such Trust Securities remain outstanding, the Company shall (i) maintain 100% direct or indirect ownership of the Common Securities of such Trust; provided, however, that any permitted successor of the Company under this Indenture may succeed to the Company's ownership of such Common Securities; (ii) not voluntarily terminate, wind up or liquidate such Trust, except upon prior approval of the Federal Reserve if then so required under applicable capital guidelines, policies or regulations of the Federal Reserve and use its reasonable efforts to cause such Trust (a) to remain a business trust (and to avoid involuntary termination, winding up or liquidation), except in connection with a distribution of the Debentures of such series, the redemption of all of the Trust Securities of such Trust or certain mergers, consolidations or amalgamations, each as permitted by the Trust Agreement of such Trust; and (b) to otherwise continue not to be treated as an association taxable as a corporation or partnership for United States federal income tax purposes; (iii) use its reasonable efforts to cause each holder of Trust Securities of such Trust to be treated as owning an undivided beneficial interest in the Debentures of such series; and (iv) the Company, and any successor to the Company, shall use best efforts to maintain the eligibility of such Preferred Securities for quotation or listing on any national securities exchange or other organization on which such Preferred Securities are then quoted or listed (including, if applicable, The Nasdaq National Market) and shall use best efforts to keep such Preferred Securities so quoted or listed for so long as such Preferred Securities remain outstanding. In connection with the distribution of Debentures that have been issued to a Trust in connection with the issuance of Trust Securities by such Trust to the holders of the Preferred Securities issued by such Trust upon a Dissolution Event, the Company shall use its best efforts to list such Debentures on The Nasdaq National Market or on such exchange or other organization as such Preferred Securities are then listed or quoted. For so long as any Debentures remain outstanding, the Company shall fulfill all reporting and filing obligations under the Exchange Act, as applicable to companies having a class of securities registered under Section 12(b) or 12(g) thereunder.

3.8 Waiver of Usury, Stay or Extension Laws.

The Company shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performances of this Indenture, and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE IV

DEBENTUREHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

4.1 Company to Furnish Trustee Names and Addresses of Debentureholders.

The Company shall furnish or cause to be furnished to the Trustee (a) on a quarterly basis on each regular record date for each series of Debentures a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of such series of Debentures as of such regular record date, provided that the Company shall not be obligated to furnish or cause to furnish such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company (in the event the Company fails to provide such list on a quarterly basis, the Trustee shall be entitled to rely on the most recent list provided by the Company); 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; provided, however, that, in either case, no such list need be furnished if the Trustee shall be the Debenture Registrar.

4.2 Preservation of Information Communications with Debentureholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of each series of Debentures contained in the most recent list furnished to it as provided in Section 4.1 and as to the names and addresses of holders of each series of Debentures received by the Trustee in its capacity as registrar for the Debentures (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 4.1 upon receipt of a new list so furnished.

(c) Debentureholders may communicate as provided in Section 312(b) of the Trust Indenture Act with other Debentureholders with respect to their rights under this Indenture or under the Debentures.

4.3 Reports by the Company.

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

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

(c) The Company covenants and agrees to transmit by mail, first class postage prepaid, or reputable overnight delivery service that provides for evidence of receipt, to the Debentureholders, as their names and addresses appear upon the Debenture Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 4.3 as may be required by rules and regulations prescribed from time to time by the Commission.

4.4 Reports by the Trustee.

(a) On or before _____ in each year in which any of the Debentures are Outstanding, the Trustee shall transmit by mail, first class postage prepaid, to the Debentureholders, as their names and addresses appear upon the Debenture Register, a brief report dated as of the preceding _____, if and to the extent required under Section 313(a) of the Trust Indenture Act.

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

(c) A copy of each such report shall, at the time of such transmission to Debentureholders, be filed by the Trustee with the Company, with each stock exchange upon which any Debentures are listed (if so listed) and also with the Commission. The Company agrees to notify the Trustee when any Debentures become listed on any stock exchange.

ARTICLE V

REMEDIES OF THE TRUSTEE AND DEBENTUREHOLDERS ON EVENT OF DEFAULT

5.1 Events of Default.

(a) Unless otherwise provided with respect to a series of Debentures in an indenture supplemental hereto providing for the creation of that series, each of the following events of default shall constitute an Event of Default with respect to Debentures of such series, as shall any other events as may be established with respect to Debentures of that series as contemplated by Section 2.2 (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 an administrative or governmental body):

(i) the Company defaults in the payment of any installment of interest upon any of the Debentures of that series, as and when the same shall become 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 of

any particular series of Debentures established as contemplated in this Indenture shall not constitute a default in the payment of interest for this purpose;

(ii) the Company defaults in the payment of the principal on any of the Debentures of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise;

(iii) the Company fails to observe or perform any other of its covenants or agreements with respect to any of the Debentures of that series for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the holders of at least 25% in principal amount of the Debentures of that series at the time Outstanding;

(iv) the Company pursuant to or within the meaning of any Bankruptcy Law (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property; or (iv) makes a general assignment for the benefit of its creditors; or

(v) a court of competent jurisdiction enters an order under any Bankruptcy Law that (i) is for relief against the Company in an involuntary case; (ii) appoints a Custodian of the Company for all or substantially all of its property; or (iii) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 90 days.

(b) In each and every such case referred to in paragraph (i) through (v) of this Section 5.1(a), unless the principal of all the Debentures with respect to which an Event of Default has occurred shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Debentures of such series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Debentureholders) may declare the principal of all the Debentures of such series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, notwithstanding anything contained in this Indenture or in the Debentures of such series.

(c) At any time after the principal of the Debentures of such series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the holders of a majority in aggregate principal amount of the Debentures of such series then Outstanding hereunder, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if: (i) the Company has paid or deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all the Debentures of such series and the principal of any and all Debentures of such series that shall have become due otherwise than by acceleration (with interest upon such principal, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the

Debentures of such series to the date of such payment or deposit) and the amount payable to the Trustee under Section 6.7; and (ii) any and all Events of Default under this Indenture, other than the nonpayment of principal on Debentures that shall not have become due by their terms, shall have been remedied or waived as provided in Section 5.6. No such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

(d) In case the Trustee shall have proceeded to enforce any right with respect to Debentures of any series 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 and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee shall continue as though no such proceedings had been taken.

5.2 Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Company covenants that (1) in case it shall default in the payment of any installment of interest on any of the Debentures of any series, and such default shall have continued for a period of 30 days; or (2) in case it shall default in the payment of the principal of any of the Debentures of any series when the same shall have become due and payable, whether upon maturity of the Debentures of such series or upon redemption or upon declaration or otherwise, then, upon demand of the Trustee, the Company shall pay to the Trustee, for the benefit of the holders of the Debentures of such series, the whole amount that then shall have become due and payable on all such Debentures of such series for principal or interest, or both, as the case may be, with interest upon the overdue principal and (to the extent that payment of such interest is enforceable under applicable law and, if the Debentures of such series are held by the Trust or a trustee of the Trust, without duplication of any other amounts paid by the Trust or trustee in respect thereof) upon overdue installments of interest at the rate per annum expressed in the Debentures of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 6.7.

(b) If the Company shall fail to pay such amounts set forth in Section 5.2(a) forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action 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 other obligor upon such Debentures and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or other obligor upon such Debentures, wherever situated.

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or judicial proceedings affecting the Company, any Trust, or the creditors or property of the Company or any Trust, the Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the

Trustee and of the holders of the Debentures (or, with respect to any of the foregoing events affecting a Trust, the Debentures that have been issued to such Trust) allowed for the entire amount due and payable by the Company under this Indenture at the date of institution of such proceedings and for any additional amount that may become due and payable by the Company after such date, and to collect and receive any moneys or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee under Section 6.7; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Debentures of each series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Debentureholders, to pay to the Trustee any amount due it under Section 6.7.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to any of the Debentures, may be enforced by the Trustee without the possession of any of such Debentures, or the production thereof at 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, after provision for payment to the Trustee of any amounts due under Section 6.7, be for the ratable benefit of the holders of such Debentures. In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or 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. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Debentureholder any plan of reorganization, arrangement, adjustment or composition affecting any of the Debentures or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Debentureholder in any such proceeding.

5.3 Application of Moneys Collected.

Any moneys or other assets collected by the Trustee pursuant to this Article V with respect to any of the Debentures shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such moneys or other assets on account of principal or interest, upon presentation of such Debentures in respect of which moneys have been collected, and notation thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 6.7;

SECOND: To the payment of all Senior Indebtedness of the Company if and to the extent required by Article XIII; and

THIRD: To the payment of the amounts then due and unpaid upon such Debentures for principal and interest, in respect of which or for the benefit of which such money has been

collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Debentures for principal and interest, respectively.

5.4 Limitation on Suits.

(a) Except as set forth in this Indenture, no holder of any Debenture of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (i) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to the Debentures of such series specifying such Event of Default, as hereinbefore provided; (ii) the holders of not less than 25% in aggregate principal amount of the Debentures of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as trustee hereunder; (iii) such holder or holders shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding; and (v) during such 60 day period, the holders of a majority in principal amount of the Debentures of such series do not give the Trustee a direction inconsistent with the request.

(b) Notwithstanding anything contained herein to the contrary or any other provisions of this Indenture, the right of any holder of any Debentures to receive payment of the principal of and interest on such Debentures, as therein provided, on or after the respective due dates expressed in such Debenture (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder and by accepting a Debenture hereunder it is expressly understood, intended and covenanted by the taker and holder of every Debenture of any series with every other such taker and holder and the Trustee, that no one or more holders of Debentures of any series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other Debentures, 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 Debentures of the applicable series. For the protection and enforcement of the provisions of this Section 5.4, each and every Debentureholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

5.5 Rights and Remedies Cumulative; Delay or Omission not Waiver.

(a) Except as otherwise provided in Section 2.7(b), all powers and remedies given by this Article V to the Trustee or to the Debentureholders 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 Debentures, 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 Debentures of any series.

(b) No delay or omission of the Trustee or of any holder of any of the Debentures 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 on 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 the Debentureholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Debentureholders.

5.6 Control by Debentureholders.

The holders of a majority in aggregate principal amount of the Debentures of any or all series affected (voting as one class) at the time Outstanding, determined in accordance with Section 7.4, 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 such direction shall not be in conflict with any rule of law or with this Indenture. Subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of any series of Debentures at the time Outstanding affected thereby, determined in accordance with Section 7.4, may on behalf of the holders of all of such Debentures waive any past default in the performance of any of the covenants contained herein and its consequences, except (i) a default in the payment of the principal of, or interest on, any of such Debentures as and when the same shall become due by the terms of such Debentures otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal has been deposited with the Trustee (in accordance with Section 5.1(c)); (ii) a default in the covenants contained in Section 3.7 with respect to a Trust to which such Debentures have been issued; or (iii) in respect of a covenant or provision hereof which cannot be modified or amended without the consent of the holder of each Outstanding Debenture affected; provided, however, that if the Debentures are held by a Trust or a trustee of a Trust, such waiver or modification to such waiver shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the applicable Trust shall have consented to such waiver or modification to such waiver; provided further, that if the consent of the holder of each Outstanding Debenture that has been issued to such Trust in connection with issuance of Trust Securities by such Trust is required, such waiver shall not be effective until each holder of the Trust Securities of such Trust shall have consented to such waiver. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Debentures of each such series (or of all the Debentures, as the case may be) shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

5.7 Undertaking to Pay Costs.

All parties to this Indenture agree, and each holder of any Debentures by such holder's 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, 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 5.7 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Debentureholder, or group of Debentureholders of any series holding more than 10% in aggregate principal amount of the Outstanding Debentures of that series, or to any suit instituted by any Debentureholder for the enforcement of the payment of the principal of or interest on any Debentures, on or after the respective due dates expressed in any such Debenture or established pursuant to this Indenture.

5.8 Direct Action; Right of Set-Off.

In the event that an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest on or principal of the Debentures of any series on an Interest Payment Date or Maturity Date, as applicable, then a holder of Preferred Securities issued by a Trust to which such Debentures have been issued may institute a legal proceeding directly against the Company for enforcement of payment to such holder of the principal of or interest on such Debentures having a principal amount equal to the aggregate Liquidation Amount of such Preferred Securities of such holders (a "Direct Action"). In connection with such Direct Action, the Company will have a right of set-off under this Indenture with respect to such series of Debentures to the extent of any payment actually made by the Company to such holder of the Preferred Securities with respect to such Direct Action.

ARTICLE VI

CONCERNING THE TRUSTEE

6.1 Certain Duties and Responsibilities of the Trustee.

(a) With respect to the holders of any series of Debentures issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to Debentures of that series and after the curing of all Events of Default that may have occurred with respect to Debentures of that series, shall undertake to perform with respect to such Debentures such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default has occurred that 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 its 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 Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

- (1) 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

- (2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions 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;

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

(iii) 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 Debentureholders pursuant to Section 5.6 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 with respect to the Debentures; and

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

6.2 Notice of Defaults.

Within 90 days after actual knowledge by a Responsible Officer of the Trustee of the occurrence of any default hereunder with respect to any series of Debentures, the Trustee shall transmit by mail to all holders of such Debentures, as their names and addresses appear in the Debenture Register, notice of such default, unless such default shall have been cured or waived; provided, however, that, except in the case default in the payment of the principal or interest (including any Additional Interest) on such Debentures, the 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 the directors and/or Responsible Officers of the Trustee determines in good faith that the withholding of such notice is in the interests of the holders of such Debentures; and provided, further, that in the case of any default of the character specified in Section 5.1(a)(iii), no such notice to holders of such Debentures need be sent until at least 30 days after the occurrence thereof. For the purposes of this Section 6.2, the term "default" means any event which is, or after notice or lapse of time or both, would become, an Event of Default with respect to a series of Debentures.

6.3 Certain Rights of Trustee.

Except as otherwise provided in Section 6.1:

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

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Board Resolution or an instrument signed in the name of the Company by its President or any Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer thereof (unless other evidence in respect thereof is specifically prescribed herein);

(c) The Trustee shall not be deemed to have knowledge of a default or an Event of Default, other than an Event of Default specified in Section 5.1(a)(i) or (ii), unless and until it receives written notification of such Event of Default from the Company or by holders of at least 25% of the aggregate principal amount of the series of Debentures to which the Event of Default relates at the time Outstanding;

(d) The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted hereunder in good faith and in reliance thereon;

(e) 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 Debentureholders, pursuant to the provisions of this Indenture, unless such Debentureholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default (that has not been cured or waived) to exercise with respect to the Debentures to which the Event of Default relates such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs;

(f) The Trustee shall not be liable for any action taken or omitted to be taken 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;

(g) 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, security, or other papers or documents, unless requested in writing so to do by the holders of not less than a majority in principal amount of the applicable series of the Outstanding Debentures (determined as provided in Section 7.4); provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this

Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand; and

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

6.4 Trustee Not Responsible for Recitals, etc.

(a) The Recitals contained herein and in the Debentures shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debentures.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Debentures or of the proceeds of such Debentures, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture, or for the use or application of any moneys received by any paying agent other than the Trustee.

6.5 May Hold Debentures.

The Trustee or any paying agent or registrar for the Debentures, in its individual or any other capacity, may become the owner or pledgee of Debentures with the same rights it would have if it were not Trustee, paying agent or Debenture Registrar.

6.6 Moneys Held in Trust.

Subject to the provisions of Section 10.5, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon.

6.7 Compensation and Reimbursement.

(a) The Company covenants and agrees to pay to the Trustee, and the Trustee shall be entitled to, such reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), as the Company and the Trustee may from time to time agree in writing, for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, and, except as otherwise expressly provided herein, the Company shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of

all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, bad faith or willful misconduct. The Company also covenants to indemnify the Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct 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.

(b) The obligations of the Company under this Section 6.7 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Debentures 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 Debentures.

6.8 Reliance on Officers' Certificate.

Except as otherwise provided in Section 6.1, 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 suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

6.9 Disqualification: Conflicting Interests.

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.

6.10 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee with respect to the Debentures issued hereunder which shall at all times be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by federal, state, territorial, or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 6.10, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance

with the provisions of this Section 6.10, the Trustee shall resign immediately in the manner and with the effect specified in Section 6.11.

6.11 Resignation and Removal; Appointment of Successor.

(a) The Trustee or any successor hereafter appointed, may at any time resign by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Debentureholders, as their names and addresses appear upon the Debenture Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to one or more series of Debentures by written instrument, in duplicate, executed by order of the Board of Directors, 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 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to such Debentures, or any Debentureholder who has been a bona fide holder of a Debenture or Debentures of the applicable series for at least six months may, subject to the provisions of Sections 6.9 and 6.10, 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 one of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 6.9 after written request therefor by the Company or by any Debentureholder who has been a bona fide holder of a Debenture or Debentures of the applicable series for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 6.10 and shall fail to resign after written request therefor by the Company or by any such Debentureholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or commence a voluntary bankruptcy proceeding, or a receiver of the Trustee or of its property shall be appointed or consented to, 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 with respect to all Debentures of any series and appoint a successor trustee or trustees by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee or trustees, or, subject to the provisions of Sections 6.9 and 6.10, unless the Trustee's duty to resign is stayed as provided herein, any Debentureholder who has been a bona fide holder of a Debenture or Debentures of the applicable series for at least six months may, on behalf of that holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee or trustees. Such court may thereupon after such notice, if

any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee or trustees.

(c) The holders of a majority in aggregate principal amount of the Debentures of any series at the time Outstanding may at any time remove the Trustee with respect to such series by so notifying the Trustee and the Company and may appoint a successor Trustee with respect to such series with the consent of the Company.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee or trustees pursuant to any of the provisions of this Section 6.11 shall become effective upon acceptance of appointment by the successor trustee or trustees as provided in Section 6.12.

(e) Any successor trustee appointed pursuant to this Section 6.11 may be appointed with respect to the Debentures of the applicable series, and at any time there shall be only one Trustee with respect to the Debentures of any one series.

6.12 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor trustee, every successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, 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, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder.

(b) If a successor trustee is appointed with respect to the Debentures of one or more (but not all) series, the Company, the retiring trustee and each successor trustee with respect to the Debentures of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring trustee with respect to the Debentures of any series as to which the predecessor trustee is not retiring shall continue to be vested in the predecessor trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trustee hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such trustee.

(c) Upon request of any successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and trusts referred to in paragraph (a) of this Section 6.12.

(d) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified and eligible under this Article VI.

(e) Upon acceptance of appointment by a successor trustee as provided in this Section 6.12, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Debentureholders of the applicable series, as their names and addresses appear upon the Debenture Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

6.13 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 6.9 and eligible under the provisions of Section 6.10, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Debentures of any series shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Debentures of such series so authenticated with the same effect as if such successor Trustee had itself authenticated such Debentures.

6.14 Preferential Collection of Claims Against the Company.

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

ARTICLE VII

CONCERNING THE DEBENTUREHOLDERS

7.1 Evidence of Action by Holders.

(a) Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of any or all series of Debentures 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 majority or specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Debentures in Person or by agent or proxy appointed in writing.

(b) If the Company shall solicit from the Debentureholders of any series any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officers' Certificate, fix in advance a record date for such series for the determination of Debentureholders 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 Debentureholders of such series of record at the close of business on the record date shall be deemed to be Debentureholders for the purposes of determining whether Debentureholders of the requisite proportion of Outstanding Debentures of such series have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Debentures of such series shall be computed as of the record date; provided, however, that no such authorization, agreement or consent by such Debentureholders 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.

7.2 Proof of Execution by Debentureholders.

Subject to the provisions of Section 6.1, proof of the execution of any instrument by a Debentureholder (such proof shall not require notarization) or such Debentureholder's agent or proxy and proof of the holding by any Person of any of the Debentures shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee.

(b) The ownership of Debentures shall be proved by the Debenture Register of such Debentures or by a certificate of the Debenture Registrar thereof.

(c) The Trustee may require such additional proof of any matter referred to in this Section 7.2 as it shall deem necessary.

7.3 Who May Be Deemed Owners.

Prior to the due presentment for registration of transfer of any Debenture, the Company, the Trustee, any paying agent, any Authenticating Agent and any Debenture Registrar may deem and treat the Person in whose name such Debenture shall be registered upon the books of the Company as the absolute owner of such Debenture (whether or not such Debenture shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Debenture Registrar) for the purpose of receiving payment of or on account of the principal of and interest on such Debenture and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Authenticating Agent nor any Debenture Registrar shall be affected by any notice to the contrary.

7.4 Certain Debentures Owned by Company Disregarded.

In determining whether the holders of the requisite aggregate principal amount of Debentures have concurred in any direction, consent or waiver under this Indenture, the Debentures of the applicable series that are owned by the Company or any other obligor on such Debentures or by any Person directly or indirectly controlling or controlled by or under common control with the Company or any other obligor on such series of Debentures shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except (i) that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only such Debentures that the Trustee actually knows are so owned shall be so disregarded;

and (ii) for purposes of this Section 7.4, the Trust shall be deemed not to be controlled by the Company. The Debentures so owned that 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 so to act with respect to such Debentures and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In 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.

7.5 Actions Binding on Future Debentureholders.

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 majority or percentage in aggregate principal amount of the Debentures of any series specified in this Indenture in connection with such action, any holder of a Debenture that is shown by the evidence to be included in the Debentures the holders of which have consented to such action may, by filing written notice with the Trustee, and upon proof of holding as provided in Section 7.2, revoke such action so far as concerns such Debenture. Except as aforesaid any such action taken by the holder of any Debenture shall be conclusive and binding upon such holder and upon all future holders and owners of such Debenture, and of any Debenture issued in exchange therefor, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Debenture. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Debentures of any series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all such Debentures.

ARTICLE VIII

SUPPLEMENTAL INDENTURES

8.1 Supplemental Indentures Without the Consent of Debentureholders.

In addition to any supplemental indenture otherwise authorized by this Indenture, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect), without the consent of the Debentureholders, for one or more of the following purposes:

- (a) to cure any ambiguity, defect, or inconsistency herein, or in any series of Debentures;
- (b) to comply with Article VII;
- (c) to provide for uncertificated Debentures in addition to or in place of certificated Debentures;
- (d) to add to the covenants of the Company for the benefit of the holders of all or any series of Debentures (and if such covenants are for the benefit of less than all series of Debentures, stating that such covenants are expressly being included for the benefit of such series) or to surrender any right or power herein conferred upon the Company;

(e) to add to, delete from, or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication, and delivery of any series of Debentures, only as herein set forth;

(f) to make any change that does not adversely affect the rights of any Debentureholder in any material respect;

(g) to provide for the issuance of and establish the form and terms and conditions of any series of Debentures as permitted by Sections 2.1 and 2.2, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or any series of Debentures, or to add to the rights of the holders of any series of Debentures;

(h) to qualify or maintain the qualification of this Indenture under the Trust Indenture Act; or

(i) to evidence a consolidation or merger involving the Company as permitted under Section 9.1.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. Any supplemental indenture authorized by the provisions of this Section 8.1 may be executed by the Company and the Trustee without the consent of the holders of any of the Debentures at the time Outstanding, notwithstanding any of the provisions of Section 8.2.

8.2 Supplemental Indentures with Consent of Debentureholders.

With the consent (evidenced as provided in Section 7.1) of any series (except as may otherwise be provided by the terms of any supplemental indenture establishing such series in accordance with Section 2.2 hereof) of the holders of not less than a majority in aggregate principal amount of the Debentures at the time Outstanding of all series affected by such supplemental indenture (voting as a class), the Company, when authorized by Board Resolutions, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner not covered by Section 8.1 the rights of the holders of the Debentures of each series so affected under this Indenture; provided, however, that no such supplemental indenture shall without the consent of the holders of each Debenture then Outstanding and affected thereby, (i) extend the fixed maturity of any Debentures of any series (except as may otherwise be provided by the terms of any supplemental indenture establishing such series in accordance with Section 2.2 hereof), or reduce the rate or extend the time of payment of interest thereon (except as may otherwise be provided by the terms of any supplemental indenture establishing such series in accordance with Section 2.2 hereof), or reduce the principal amount thereof without the consent of the holder of each Debenture so affected; or (ii) reduce the aforesaid percentage of Debentures, the holders of which are required

to consent to any such supplemental indenture; provided further, that if the applicable Debentures are held by a Trust or a trustee of such Trust, such supplemental indenture shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the related Trust shall have consented to such supplemental indenture; provided further, that if the consent of the holder of each Outstanding Debenture of any series is required, such supplemental indenture shall not be effective until each holder of the Trust Securities of the related Trust shall have consented to such supplemental indenture. It shall not be necessary for the consent of the Debentureholders affected thereby under this Section 8.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

8.3 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture pursuant to the provisions of this Article VIII, 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 Debentures of all series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

8.4 Debentures Affected by Supplemental Indentures.

Debentures affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article VIII, may bear a notation in form approved by the Company, provided such form meets the requirements of any exchange or automated quotation system upon which the series of Debentures affected thereby may be listed or quoted, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Debentures so modified as to conform, in the opinion of the Board of Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Debentures then Outstanding.

8.5 Execution of Supplemental Indentures.

(a) Upon the request of the Company, accompanied by its Board Resolutions authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Debentureholders required to consent thereto as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture. The Trustee, subject to the provisions of Section 6.1, may receive an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article VIII is authorized or permitted by, and conforms to, the terms of this Article VIII and that it is proper for the Trustee under the provisions of this Article VIII to join in the execution thereof.

(b) Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 8.5, the Trustee shall transmit by mail, first class postage prepaid, a notice, setting forth in general terms the substance of such supplemental indenture, to the Debentureholders of all series affected thereby as their names and addresses appear upon the Debenture 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.

ARTICLE IX

SUCCESSOR CORPORATION

9.1 Company May Consolidate, etc.

Nothing contained in this Indenture or in any of the Debentures shall prevent any consolidation or merger of the Company with or into any other corporation or corporations (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 other disposition 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 corporation (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, however, the Company hereby covenants and agrees that, (i) upon any such consolidation, merger, sale, conveyance, transfer or other disposition, the due and punctual payment, in the case of the Company, of the principal of and interest on all of the Debentures, 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 as the case may be, 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 executed and delivered to the Trustee by the entity formed by such consolidation, or into which the Company, as the case may be, shall have been merged, or by the entity which shall have acquired such property, and the ultimate parent entity of such successor entity expressly assumes the obligations of the Company under each of the related Preferred Securities Guarantees, to the extent any Preferred Securities are then Outstanding; (ii) in case the Company consolidates with or merges into another Person or conveys or transfers its properties and assets substantially as an entirety to any Person, the successor Person is organized under the laws of the United States or any state or the District of Columbia; and (iii) immediately after giving effect thereto, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing.

9.2 Successor Corporation Substituted.

(a) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition 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, in the case of the Company, the due and punctual payment of the principal of and interest on all of the Debentures Outstanding and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, as the case may be, such successor

corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named as the Company herein, and thereupon the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Debentures.

(b) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition such changes in phraseology and form (but not in substance) may be made in the Debentures thereafter to be issued as may be appropriate.

(c) Nothing contained in this Indenture or in any of the Debentures shall prevent the Company from merging into itself or acquiring by purchase or otherwise all or any part of the property of any other Person (whether or not affiliated with the Company).

9.3 Evidence of Consolidation, etc. to Trustee.

The Trustee, subject to the provisions of Section 6.1, may receive an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or other disposition, and any such assumption, comply with the provisions of this Article IX.

ARTICLE X

SATISFACTION AND DISCHARGE

10.1 Satisfaction and Discharge of Indenture.

If at any time: (a) the Company shall have delivered to the Trustee for cancellation all Debentures theretofore authenticated (other than any Debentures that shall have been destroyed, lost or stolen and that shall have been replaced or paid as provided in Section 2.7) and all Debentures for whose payment money or Governmental Obligations have theretofore been deposited in trust or segregated and held in trust by the Company (and thereupon repaid to the Company or discharged from such trust, as provided in Section 10.5); or (b) all such Debentures not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit or cause to be deposited with the Trustee as trust funds the entire amount in moneys or Governmental Obligations sufficient or a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay at maturity or upon redemption all Debentures not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company; then this Indenture shall thereupon cease to be of further effect except for the provisions of Sections 2.3, 2.5, 2.7, 3.1, 3.2, 3.3, 6.6, 6.7 and 6.10, that shall survive until the date of maturity or redemption date, as the case may be, and Sections 6.7 and 10.5, that shall survive to such date and thereafter, and the Trustee, on demand of the Company and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

10.2 Discharge of Obligations.

If at any time all Debentures of any series not heretofore delivered to the Trustee for cancellation or that have not become due and payable as described in Section 10.1 shall have been paid by the Company by depositing irrevocably with the Trustee as trust funds moneys or an amount of Governmental Obligations sufficient in the opinion of a nationally recognized certified public accounting firm to pay at maturity or upon redemption all Debentures of such series not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then after the date such moneys or Governmental Obligations, as the case may be, are deposited with the Trustee, the obligations of the Company under this Indenture shall cease to be of further effect except for the provisions of Sections 2.3, 2.5, 2.7, 3.1, 3.2, 3.3, 6.6, 6.7 and 10.5 hereof that shall survive until such Debentures shall mature and be paid. Thereafter, Sections 6.7 and 10.5 shall survive.

10.3 Deposited Moneys to be Held in Trust.

All monies or Governmental Obligations deposited with the Trustee pursuant to Sections 10.1 or 10.2 shall be held in trust and shall be available for payment as due, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the applicable Debentures for the payment or redemption of which such moneys or Governmental Obligations have been deposited with the Trustee.

10.4 Payment of Monies Held by Paying Agents.

In connection with the satisfaction and discharge of this Indenture, all moneys or Governmental Obligations then held by any paying agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys or Governmental Obligations.

10.5 Repayment to Company.

Any monies or Governmental Obligations deposited with any paying agent or the Trustee, or then held by the Company in trust, for payment of principal of or interest on any series of Debentures that are not applied but remain unclaimed by the holders of such Debentures for at least two years after the date upon which the principal of or interest on such Debentures shall have respectively become due and payable, shall be repaid to the Company, as the case may be, on December 31 of each year or (if then held by the Company) shall be discharged from such trust; and thereupon the paying agent and the Trustee shall be released from all further liability with respect to such moneys or Governmental Obligations, and the holder of any of such Debentures entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof.

ARTICLE XI

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

11.1 No Recourse.

No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Debentures, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debentures or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debentures or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Debentures.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Effect on Successors and Assigns.

All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its respective successors and assigns, whether so expressed or not.

12.2 Actions by Successor.

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 corresponding board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

12.3 Surrender of Company Powers.

The Company by instrument in writing executed by appropriate authority of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company,

and thereupon such power so surrendered shall terminate both as to the Company, as the case may be, and as to any successor corporation.

12.4 Notices.

Except as otherwise expressly provided herein any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Debentures to or on the Company may be given or served by being deposited first class postage prepaid in a post-office letterbox addressed (until another address is filed in writing by the Company with the Trustee), as follows: First Merchants Corporation, 200 East Jackson Street, Post Office Box 792, Muncie, Indiana 47308, Attention: Larry R. Helms, Esq., Senior Vice President & General Counsel. Any notice, election, request or demand by the Company or any Debentureholder 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 Corporate Trust Office of the Trustee.

12.5 Governing Law.

This Indenture and each Debenture shall be deemed to be a contract made under the internal laws of the State of Indiana and for all purposes shall be construed in accordance with the laws of said State.

12.6 Treatment of Debentures as Debt.

It is intended that the Debentures shall be treated as indebtedness and not as equity for federal income tax purposes. The provisions of this Indenture shall be interpreted to further this intention.

12.7 Compliance Certificates and Opinions.

(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 all conditions precedent 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, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

(b) Each certificate or opinion of the Company provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant 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, in the opinion of such Person, 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; provided, however, that each such certificate shall comply with the provisions of Section 314 of the Trust Indenture Act.

12.8 Payments on Business Days.

In any case where the date of maturity of interest or principal of any Debenture or the date of redemption of any Debenture shall not be a Business Day, then payment of interest or principal may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date, except that if such next succeeding Business Day falls in the next succeeding calendar year, then such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

12.9 Conflict with Trust Indenture Act.

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

12.10 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.

12.11 Severability.

In case any one or more of the provisions contained in this Indenture or in any series of Debentures shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Debentures, but this Indenture and such Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

12.12 Assignment.

The Company shall 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 shall remain liable for all such obligations. Subject to the foregoing, this 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 thereto.

12.13 Acknowledgment of Rights.

The Company acknowledges that, with respect to any series of Debentures held by a Trust or a trustee of such Trust, if the applicable Property Trustee fails to enforce its rights under this Indenture as the holder of such Debentures held as the assets of such Trust, any holder of the applicable 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 or entity. Notwithstanding the foregoing, if an Event of Default with respect to a series of Debentures has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal on such Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), the Company acknowledges that a holder of the applicable Preferred Securities may directly institute a proceeding for enforcement of payment to such holder of the principal of or interest on such Debentures having a principal amount equal to the aggregate liquidation amount of such Preferred Securities of such holder on or after the respective due date specified in such Debentures.

ARTICLE XIII

SUBORDINATION OF DEBENTURES

13.1 Agreement to Subordinate.

The Company covenants and agrees, and each holder of Debentures issued hereunder by such holder's acceptance thereof likewise covenants and agrees, that all Debentures shall be issued subject to the provisions of this Article XIII; and each holder of a Debenture, 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 interest on all Debentures 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 Senior Debt, Subordinated Debt and Additional Senior Obligations (collectively, "Senior Indebtedness") to the extent provided herein, whether outstanding at the date of this Indenture or thereafter incurred. No provision of this Article XIII shall prevent the occurrence of any default or Event of Default hereunder.

13.2 Default on Senior Debt, Subordinated Debt or Additional Senior Obligations.

In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness of the Company, or in the event that the maturity of any Senior Indebtedness of the Company has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of or interest on any series of Debentures. In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding sentence of this Section 13.2, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that the holders of the Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Senior Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of Senior Indebtedness.

13.3 Liquidation; Dissolution; Bankruptcy.

(a) 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 Indebtedness 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 or interest on any series of Debentures; 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 holders of any series of Debentures or the Trustee would be entitled to receive from the Company, except for the provisions of this Article XIII, 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 holders of the applicable Debentures or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness of the Company (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness 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 Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Indebtedness 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 Indebtedness, before any payment or distribution is made to the holders of any series of Debentures or to the Trustee.

(b) 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 Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, and their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness of the Company, as the case may be, remaining unpaid to the extent necessary to pay such Senior Indebtedness 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 Indebtedness.

(c) For purposes of this Article XIII, 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 XIII with respect to the Debentures to the payment of all Senior Indebtedness of the Company, as the case may be, that may at the time be outstanding, provided that (i) such Senior Indebtedness 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 Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with,

or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article IX shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 13.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article IX. Nothing in Section 13.2 or in this Section 13.3 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7.

13.4 Subrogation.

(a) Subject to the payment in full of all Senior Indebtedness of the Company, the rights of the holders of each series of Debentures shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Indebtedness until the principal of and interest on the Debentures shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the holders of any series of Debentures or the Trustee would be entitled except for the provisions of this Article XIII, and no payment over pursuant to the provisions of this Article XIII to or for the benefit of the holders of such Senior Indebtedness by holders of any series of Debentures or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness of the Company, and the holders of such Debentures, be deemed to be a payment by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article XIII are and are intended solely for the purposes of defining the relative rights of the holders of the Debentures, on the one hand, and the holders of such Senior Indebtedness on the other hand.

(b) Nothing contained in this Article XIII or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Company, its creditors (other than the holders of Senior Indebtedness of the Company), and the holders of each series of Debentures, the obligation of the Company, which is absolute and unconditional, to pay to the holders of each series of Debentures the principal of and interest on such Debentures 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 each series of Debentures and creditors of the Company, as the case may be, other than the holders of Senior Indebtedness of the Company, as the case may be, nor shall anything herein or therein prevent the Trustee or the holder of any Debenture from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XIII of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

(c) Upon any payment or distribution of assets of the Company referred to in this Article XIII, the Trustee, subject to the provisions of Article VI, and the holders of the Debentures 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 holders of the Debentures, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness 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 XIII.

13.5 Trustee to Effectuate Subordination.

Each holder of Debentures by such holder's acceptance thereof authorizes and directs the Trustee on such holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XIII and appoints the Trustee such holder's attorney-in-fact for any and all such purposes.

13.6 Notice by the Company.

(a) 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 any series of Debentures pursuant to the provisions of this Article XIII. Notwithstanding the provisions of this Article XIII 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 any series of Debentures pursuant to the provisions of this Article XIII, 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 Indebtedness or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1, 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 13.6 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 interest on any Debenture), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee, subject to the provisions of Section 6.1, 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 Indebtedness of the Company (or a trustee on behalf of such holder) to establish that such notice has been given by a holder of such Senior Indebtedness 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 Indebtedness to participate in any payment or distribution pursuant to this Article XIII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XIII, 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.

13.7 Rights of the Trustee; Holders of Senior Indebtedness.

(a) The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XIII in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder. The Trustee's right to compensation and reimbursement of expenses as set forth in Section 6.7 shall not be subject to the subordination provisions of the Article XIII.

(b) With respect to the holders of Senior Indebtedness 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 XIII, and no implied covenants or obligations with respect to the holders of such Senior Indebtedness 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 Indebtedness and, subject to the provisions of Section 6.1, the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to holders of Debentures, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article XIII or otherwise.

13.8 Subordination May Not be Impaired.

(a) No right of any present or future holder of any Senior Indebtedness 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.

(b) Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the holders of any series of Debentures, without incurring responsibility to the holders of any series of Debentures and without impairing or releasing the subordination provided in this Article XIII or the obligations hereunder of the holders of any series of Debentures to the holders of such Senior Indebtedness, 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 Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (iii) release any Person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, all as of the day and year first above written.

FIRST MERCHANTS CORPORATION,
As Company

By: _____
Name: _____
Title: _____

FIRST UNION COMPANY, NATIONAL ASSOCIATION,
As Trustee

By: _____
Name: _____
Title: _____

FIRST MERCHANTS CORPORATION

AND

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
AS INDENTURE TRUSTEE

FIRST SUPPLEMENTAL INDENTURE

[_____] % JUNIOR SUBORDINATED DEBENTURES DUE [_____]

Dated as of [_____]

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FIRST SUPPLEMENTAL INDENTURE

FIRST SUPPLEMENTAL INDENTURE, dated as of [_____] (this "First Supplemental Indenture") between First Merchants Corporation, an Indiana corporation (the "Company") and First Union Trust Company, National Association (the "Trustee") under the Indenture dated as of [_____] between the Company and the Trustee (the "Indenture").

RECITALS

WHEREAS, the Company executed and delivered the Indenture to the Trustee to provide for the future issuance of the Company's unsecured junior subordinated debentures to be issued from time to time in one or more series as might be determined by the Company under the Indenture, in an unlimited aggregate principal amount which may be authenticated and delivered as provided in the Indenture;

WHEREAS, pursuant to the terms of the Indenture, the Company desires to provide for the establishment of a new series of such debentures to be known as its [_____] % Junior Subordinated Debentures due [_____] (the "Debentures"), the form and substance of such Debentures and the terms, provisions and conditions thereof to be set forth as provided in the Indenture and this First Supplemental Indenture;

WHEREAS, First Merchants Capital Trust [I/II/III], a Delaware statutory business trust (the "Trust"), has offered to the public up to \$[_____] aggregate liquidation amount of its [_____] Preferred Securities (the "Preferred Securities") and proposes to invest the proceeds from such offering, together with the proceeds of the issuance and sale by the Trust to the Company of up to \$[_____] aggregate liquidation amount of its [_____] % Common Securities (the "Common Securities"), in up to \$[_____] aggregate principal amount of the Debentures;

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture;

WHEREAS, all requirements necessary to make this First Supplemental Indenture a valid instrument in accordance with its terms, and to make the Debentures, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this First Supplemental Indenture have been duly authorized in all respects;

WHEREAS, to provide the terms and conditions upon which the Debentures are to be authenticated, issued and delivered, the Company has duly authorized the execution of this First Supplemental Indenture; and

WHEREAS, all things necessary to make this First Supplemental Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, in consideration of the premises and the purchase of the Debentures by the holders thereof, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the holders of the Debentures:

ARTICLE I

DEFINITIONS

1.1 Definitions of Terms.

A term defined in the Indenture has the same meaning when used in this First Supplemental Indenture and a term defined anywhere in this First Supplemental Indenture has the same meaning throughout. A term defined in both the Indenture and this First Supplemental Indenture has the meaning herein given to it in this First Supplemental Indenture. Terms used herein shall include the plural as well as the singular.

"Accelerated Maturity Date" means if the Company elects to accelerate the Maturity Date in accordance with Section 2.2(b), the date selected by the Company which is prior to the Scheduled Maturity Date, but is after [_____].

"Additional Interest" shall have the meaning set forth in Section 2.4(c).

"Additional Junior Indebtedness" means, without duplication, (A) any indebtedness, liabilities or obligations of the Company, or any Affiliate of the Company, under debt securities (or guarantees in respect of debt securities) initially issued to any trust, or a trustee of a trust, partnership or other entity affiliated with the Company that is, directly or indirectly, a finance subsidiary (as such term is defined in Rule 3a-5 under the Investment Company Act) or other financing vehicle of the Company or any Affiliate of the Company in connection with the issuance by that entity of preferred securities or other securities that are intended to qualify for Tier 1 capital treatment (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company, other than the Debentures; provided, however, that the inability of the Company to treat all or any portion of the Additional Junior Indebtedness as Tier 1 capital shall not disqualify it as Additional Junior Indebtedness if such inability results from the Company having cumulative preferred stock, minority interests in consolidated subsidiaries, or any other class of security or interest which the Federal Reserve now or may hereafter accord Tier 1 capital treatment (including the Debentures) in excess of the amount which may qualify for treatment as Tier 1 capital under applicable capital adequacy guidelines of the Federal Reserve, and (B) any indebtedness, liabilities or obligations of the Company, or any Affiliate of the Company, that is junior or otherwise subordinate in right of payment to Senior Indebtedness of the Company and that has a maturity or is otherwise due and payable by the Company on a date twelve (12) months or more after its date of original issuance, other than the Debentures.

"Capital Treatment Event" means the receipt by the Company and the Trust of an Opinion of Counsel, rendered by a law firm having a recognized national bank regulatory practice, 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 thereof or therein, or as a result of any official or administrative pronouncement or action or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is announced on or after the date of issuance of the Preferred Securities under the Trust Agreement, there is more than an insubstantial risk of impairment of the

Company's ability to treat the Preferred Securities (or any substantial portion thereof) as Tier 1 capital (or the then equivalent thereof), for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company; provided, however, that the Trust or the Company shall have requested and received such an Opinion of Counsel with regard to such matters within a reasonable period of time after the Trust or the Company shall have become aware of the possible occurrence of any such event; provided, however, that the inability of the Company to treat all or any portion of the Liquidation Amount of the Preferred Securities as Tier 1 Capital shall not constitute the basis for a Capital Treatment Event if such inability results from the Company having cumulative preferred stock, minority interests in consolidated subsidiaries, or any other class of security or interest which the Federal Reserve now or may hereafter accord Tier 1 Capital treatment in excess of the amount which may now or hereafter qualify for treatment as Tier 1 Capital under applicable capital adequacy guidelines of the Federal Reserve as now or hereafter in effect; provided, further, however, that the distribution of the Debentures in connection with the dissolution of the Trust shall not in and of itself constitute a Capital Treatment Event.

"Change in 1940 Act Law" shall have the meaning set forth in the definition of "Investment Company Event."

"Compounded Interest" shall have the meaning set forth in Section 4.1.

"Coupon Rate" shall have the meaning set forth in Section 2.4(a).

"Deferred Interest" shall have the meaning set forth in Section 4.1.

"Dissolution Event" means that as a result of the occurrence and continuation of a Special Event, the Trust is to be dissolved in accordance with the Trust Agreement and the Debentures held by the Property Trustee are to be distributed to the holders of the Trust Securities issued by the Trust pro rata in accordance with the Trust Agreement.

"Extended Interest Payment Period" shall have the meaning set forth in Section 4.1.

"Interest Payment Date" shall have the meaning set forth in Section 2.4(a).

"Investment Company Act," means the Investment Company Act of 1940, as amended, as in effect at the date of execution of this Indenture.

"Investment Company Event" means the receipt by the Trust and the Company of an Opinion of Counsel, rendered by a law firm having a recognized national tax and securities law practice, 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"), the Trust is or shall be considered an "investment company" that is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities under the Trust Agreement; provided, however, that the Trust or the Company shall have requested and received such an Opinion of Counsel with regard to such matters within a reasonable period of time after the Trust or the Company shall have become aware of the possible occurrence of any such event.

"Maturity Date" means the date on which the Debentures mature and on which the principal shall be due and payable together with all accrued and unpaid interest thereon, including Compounded Interest and Additional Interest, if any.

"Ministerial Action" shall have the meaning set forth in Section 3.2.

"Property Trustee" has the meaning set forth in the Trust Agreement.

"Redemption Price" shall have the meaning set forth in Section 3.2.

"Scheduled Maturity Date" means [_____].

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

"Tax Event" means the receipt by the Company and the Trust of an Opinion of Counsel, rendered by a law firm having a recognized national tax and securities practice, 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 pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is announced on or after the date of issuance of the Preferred Securities under the Trust Agreement, there is more than an insubstantial risk that (i) the Trust is, or shall be within 90 days after the date of such Opinion of Counsel, subject to United States federal income tax with respect to income received or accrued on the Debentures; (ii) interest payable by the Company on the Debentures is not, or within 90 days after the date of such Opinion of Counsel, shall not be, deductible by the Company, in whole or in part, for United States federal income tax purposes; or (iii) the Trust is, or shall be within 90 days after the date of such Opinion of Counsel, subject to more than a de minimis amount of other taxes, duties, assessments or other governmental charges; provided, however, that the Trust or the Company shall have requested and received such an Opinion of Counsel with regard to such matters within a reasonable period of time after the Trust or the Company shall have become aware of the possible occurrence of any of the events described in clauses (i) through (iii) above.

"Trust Agreement" means the Amended and Restated Trust Agreement dated as of [_____] among the Company, First Union Trust Company, National Association, as Property Trustee and Delaware Trustee and the administrative trustees named therein.

"Trust Securities" means the Preferred Securities and the Common Securities, collectively.

ARTICLE II

ISSUE, DESCRIPTION, TERMS, CONDITIONS, REGISTRATION AND EXCHANGE
OF THE DEBENTURES

2.1 Designation and Principal Amount.

There is hereby authorized Debentures designated the [_____] % Junior Subordinated Debentures due [_____] limited in aggregate principal amount to \$[_____] which amount shall be as set forth in any written order of the Company for the authentication and delivery of Debentures pursuant to Section 2.2 of the Indenture.

2.2 Maturity.

(a) The Maturity Date shall be either:

(i) the Scheduled Maturity Date; or

(ii) if the Company elects to accelerate the Maturity Date to be a date prior to the Scheduled Maturity Date in accordance with Section 2.2(c), the Accelerated Maturity Date.

(b) the Company may at any time before the day which is 90 days before the Scheduled Maturity Date and after [_____] elect to shorten the Maturity Date only once to the Accelerated Maturity Date, provided that the Company has received the prior approval of the Federal Reserve if then required under applicable capital guidelines, policies or regulations of the Federal Reserve.

(c) if the Company elects to accelerate the Maturity Date in accordance with Section 2.2(b), the Company shall give notice to the Trustee and the Trust (unless the Trust is not the holder of the Debentures, in which case the Trustee will give notice to the holders of the Debentures) of the acceleration of the Maturity Date and the Accelerated Maturity Date at least 30 days and no more than 180 days before the Accelerated Maturity Date; provided, however that nothing provided in this Section 2.2 shall limit the Company's rights, as provided in Article III hereof, to redeem all or a portion of the Debentures at such time or times on or after [_____] , as the Company may so determine, or at any time upon the occurrence of a Special Event.

2.3 Form and Payment.

The Debentures shall be issued in fully registered certificated form without interest coupons. Principal and interest on the Debentures issued in certificated form shall be payable, the transfer of such Debentures shall be registrable and such Debentures shall be exchangeable for Debentures bearing identical terms and provisions at the office or agency of the Trustee; provided, however, that payment of interest may be made at the option of the Company by check mailed to the holder at such address as shall appear in the Debenture Register or by wire transfer to an account maintained

by the holder as specified in the Debenture Register, provided that the holder provides proper transfer instructions by the regular record date. Notwithstanding the foregoing, so long as the holder of any Debentures is the Property Trustee, the payment of principal of and interest (including Compounded Interest and Additional Interest, if any) on such Debentures held by the Property Trustee shall be made at such place and to such account as may be designated by the Property Trustee.

2.4 Interest.

(a) Each Debenture shall bear interest at the rate of [_____] % per annum (the "Coupon Rate") from the original date of issuance 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 quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (each, an "Interest Payment Date"), commencing on [_____] to the Person in whose name such Debenture or any Predecessor Debenture is registered, at the close of business on the regular record date for such interest installment, which shall be the fifteenth day of the last month of the calendar quarter.

(b) The amount of interest payable for any period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of interest payable for any period shorter than a full quarterly period for which interest is computed, shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. In the event that any date on which interest is payable on the Debentures is not a Business Day, then payment of interest payable on such date shall 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) , except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as is made on the date such payment was originally payable.

(c) If, at any time while the Property Trustee is the holder of any Debentures, the Trust or the Property Trustee is required to pay any taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, the Company shall pay as additional interest ("Additional Interest") on the Debentures held by the Property Trustee, such additional amounts as shall be required so that the net amounts received and retained by the Trust and the Property Trustee after paying such taxes, duties, assessments or other governmental charges shall be equal to the amounts the Trust and the Property Trustee would have received had no such taxes, duties, assessments or other government charges been imposed.

ARTICLE III

REDEMPTION OF DEBENTURES

3.1 Redemption.

Subject to the Company having received prior approval of the Federal Reserve, if then required under the applicable capital guidelines, policies or regulations of the Federal Reserve, the Company may redeem the Debentures issued hereunder on and after the dates set forth in and in accordance with the terms of this Article III.

3.2 Special Event Redemption.

Subject to the Company having received the prior approval of the Federal Reserve, if then required under the applicable capital guidelines, policies or regulations of the Federal Reserve, if a Special Event has occurred and is continuing, then, notwithstanding Section 3.3(a) but subject to Section 3.3(b), the Company shall have the right upon not less than 30 days' nor more than 60 days' notice to the holders of the Debentures to redeem the Debentures, in whole but not in part, for cash within 180 days following the occurrence of such Special Event (the "180-Day Period") at a redemption price equal to 100% of the principal amount to be redeemed plus any accrued and unpaid interest thereon to the date of such redemption (the "Redemption Price"), provided that if at the time there is available to the Company the opportunity to eliminate, within the 180-Day Period, a Tax Event by taking some ministerial action (a "Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure which has no adverse effect on the Company, the Trust or the holders of the Trust Securities issued by the Trust, the Company shall pursue such Ministerial Action in lieu of redemption, and, provided further, that the Company shall have no right to redeem the Debentures pursuant to this Section 3.2 while it is pursuing any Ministerial Action pursuant to its obligations hereunder, and, provided further, that, if it is determined that the taking of a Ministerial Action would not eliminate the Tax Event within the 180 Day Period, the Company's right to redeem the Debentures pursuant to this Section 3.2 shall be restored and it shall have no further obligations to pursue the Ministerial Action. The Redemption Price shall be paid prior to 12:00 noon, New York time, on the date of such redemption or such earlier time as the Company determines, provided that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York time, on the date such Redemption Price is to be paid.

3.3 Optional Redemption by Company.

(a) Subject to the provisions of Section 3.3(c), except as otherwise may be specified in this Indenture, the Company shall have the right to redeem the Debentures, in whole or in part, from time to time, on or after [_____], at a Redemption Price equal to 100% of the principal amount to be redeemed plus any accrued and unpaid interest thereon to the date of such redemption. Any redemption pursuant to this Section 3.3(a) shall be made upon not less than 30 days' nor more than 60 days' notice to the holder of the Debentures, at the Redemption Price. If the Debentures are only partially redeemed pursuant to this Section 3.3(a), the Debentures shall be redeemed pro rata or by lot or in such other manner as the Trustee shall deem appropriate and fair in its discretion. The Redemption Price shall be paid prior to

12:00 noon, New York time, on the date of such redemption or at such earlier time as the Company determines provided that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York time, on the date such Redemption Price is to be paid.

(b) Subject to the provisions of Section 3.3(c), the Company shall have the right to redeem Debentures at any time and from time to time in a principal amount equal to the Liquidation Amount (as defined in the Trust Agreement) of any Preferred Securities purchased and beneficially owned by the Company, plus an additional principal amount of Debentures equal to the Liquidation Amount (as defined in the Trust Agreement) of that number of Common Securities that bears the same proportion to the total number of Common Securities then outstanding as the number of Preferred Securities to be redeemed bears to the total number of Preferred Securities then outstanding. Such Debentures shall be redeemed pursuant to this Section 3.3(b) only in exchange for and upon surrender by the Company to the Property Trustee of the Preferred Securities and a proportionate amount of Common Securities, whereupon the Property Trustee shall cancel the Preferred Securities and Common Securities so surrendered and a Like Amount (as defined in the Trust Agreement) of Debentures shall be extinguished by the Trustee and shall no longer be deemed Outstanding.

(c) If a partial redemption of the Debentures would result in the delisting of the Preferred Securities issued by the Trust from The Nasdaq National Market or any national securities exchange or other organization on which the Preferred Securities are then listed or quoted, the Company shall not be permitted to effect such partial redemption and may only redeem the Debentures in whole or in part to such extent as would not cause a delisting.

3.4 Notice of Redemption.

(a) Except in the case of a redemption pursuant to Section 3.3(b), in case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Debentures in accordance with the right reserved so to do, the Company shall, or shall cause the Trustee to upon receipt of 45 days' written notice from the Company (which notice shall, in the event of a partial redemption, include a representation to the effect that such partial redemption will not result in the delisting of the Preferred Securities as described in Section 3.3(c) above), give notice of such redemption to holders of the Debentures to be redeemed by mailing, first class postage prepaid, a notice of such redemption not less than 30 days and not more than 60 days before the date fixed for redemption to such holders at their last addresses as they shall appear upon the Debenture Register unless a shorter period is specified in the Debentures to be redeemed. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered holder receives the notice. In any case, failure duly to give such notice to the holder of any Debenture designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Debentures. In the case of any redemption of Debentures prior to the expiration of any restriction on such redemption provided in the terms of such Debentures or elsewhere herein or in the Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with any such restriction. Each such notice of redemption shall specify the date fixed for redemption and the Redemption Price and shall state that payment of the Redemption Price shall be made at the Corporate Trust Office, upon

presentation and surrender of such Debentures, that interest accrued to the date fixed for redemption shall be paid as specified in said notice and that from and after said date interest shall cease to accrue. If less than all the Debentures are to be redeemed, the notice to the holders of the Debentures shall specify the particular Debentures to be redeemed. If the Debentures are to be redeemed in part only, the notice shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the redemption date, upon surrender of such Debenture, a new Debenture or Debentures in principal amount equal to the unredeemed portion thereof shall be issued.

(b) Except in the case of redemption pursuant to Section 3.3(b), if less than all the Debentures are to be redeemed, the Company shall give the Trustee at least 45 days' notice in advance of the date fixed for redemption as to the aggregate principal amount of Debentures to be redeemed, and thereupon the Trustee shall select, pro rata or by lot or in such other manner as it shall deem appropriate and fair in its discretion, the portion or portions (equal to \$____ or any integral multiple thereof) of the Debentures to be redeemed and shall thereafter promptly notify the Company in writing of the numbers of the Debentures to be redeemed, in whole or in part. The Company may, if and whenever it shall so elect pursuant to the terms hereof, by delivery of instructions signed on its behalf by its Chairman, its President or any Vice President, its Chief Financial Officer, or its Treasurer, instruct the Trustee or any paying agent to call all or any part of the Debentures for redemption and to give notice of redemption in the manner set forth in this Section 3.4, such notice to be in the name of the Company or its own name as the Trustee or such paying agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such paying agent, the Company shall deliver or cause to be delivered to, or permit to remain with, the Trustee or such paying agent, as the case may be, such Debenture Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such paying agent to give any notice by mail that may be required under the provisions of this Section 3.4.

3.5 Payment Upon Redemption.

(a) If the giving of notice of redemption shall have been completed as above provided, the Debentures or portions of Debentures to be redeemed specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable Redemption Price, and interest on such Debentures or portions of Debentures shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such Redemption Price with respect to any such Debenture or portion thereof. On presentation and surrender of such Debentures on or after the date fixed for redemption at the place of payment specified in the notice, said Debentures shall be paid and redeemed at the Redemption Price (but if the date fixed for redemption is an Interest Payment Date, the interest installment payable on such date shall be payable to the registered holder at the close of business on the applicable record date pursuant to Section 3.3).

(b) Upon presentation of any Debenture that is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Debenture is presented shall deliver to the holder thereof, at the expense of the Company, a new Debenture of authorized denomination in principal amount equal to the unredeemed portion of the Debenture so presented.

3.6 No Sinking Fund.

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

ARTICLE IV

EXTENSION OF INTEREST PAYMENT PERIOD

4.1 Extension of Interest Payment Period.

The Company shall have the right, at any time and from time to time during the term of the Debentures so long as no Event of Default has occurred and is continuing, to defer payments of interest by extending the interest payment period of such Debentures for a period not exceeding 20 consecutive quarters (the "Extended Interest Payment Period"), during which Extended Interest Payment Period no interest shall be due and payable; provided that no Extended Interest Payment Period may extend beyond the Maturity Date or end on a date other than an Interest Payment Date. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 4.1, shall bear interest thereon at the Coupon Rate compounded quarterly for each quarter of the Extended Interest Payment Period ("Compounded Interest"). At the end of the Extended Interest Payment Period, the Company shall calculate (and deliver such calculation to the Trustee) and pay all interest accrued and unpaid on the Debentures, including any Additional Interest and Compounded Interest (together, "Deferred Interest") that shall be payable to the holders of the Debentures in whose names the Debentures are registered in the Debenture Register on the first record date after the end of the Extended Interest Payment Period. Before the termination of any Extended Interest Payment Period, the Company may further extend such period so long as no Event of Default has occurred and is continuing, provided that such period together with all such further extensions thereof shall not exceed 20 consecutive quarters, or extend beyond the Maturity Date of the Debentures or end on a date other than an Interest Payment Date. Upon the termination of any Extended Interest Payment Period and upon the payment of all Deferred Interest then due, the Company may commence a new Extended Interest Payment Period, subject to the foregoing requirements. No interest shall be due and payable during an Extended Interest Payment Period, except at the end thereof, but the Company may prepay at any time all or any portion of the interest accrued during an Extended Interest Payment Period.

4.2 Notice of Extension.

(a) If the Property Trustee is the only registered holder of the Debentures at the time the Company selects an Extended Interest Payment Period, the Company shall give written notice to the Administrative Trustees, the Property Trustee and the Trustee of its selection of such Extended Interest Payment Period two Business Days before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities issued by the Trust are payable; or (ii) the date the Trust is required to give notice of the record date, or the date such Distributions are payable, to The Nasdaq National Market or other applicable self-regulatory

organization or to holders of the Preferred Securities issued by the Trust, but in any event at least one Business Day before such record date.

(b) If the Property Trustee is not the only holder of the Debentures at the time the Company selects an Extended Interest Payment Period, the Company shall give the holders of the Debentures and the Trustee written notice of its selection of such Extended Interest Payment Period at least two 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 The Nasdaq National Market or other applicable self-regulatory organization or to holders of the Debentures.

(c) The quarter in which any notice is given pursuant to paragraphs (a) or (b) of this Section 4.2 shall be counted as one of the 20 quarters permitted in the maximum Extended Interest Payment Period permitted under Section 4.1.

4.3 Limitation on Transactions.

If (i) the Company shall exercise its right to defer payment of interest as provided in Section 4.1, or (ii) there shall have occurred and be continuing any Event of Default, then (a) the Company shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than (A) dividends or distributions in common stock of the Company, or any declaration of a non-cash dividend in connection with the implementation of a shareholder 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, (B) purchases of common stock of the Company related to the rights under any of the Company's benefit plans for its directors, officers or employees, or (C) as a result of a reclassification of its capital stock for another class of its capital stock); (b) the Company shall not make any payment of interest, principal or premium, if any, or repay, repurchase or redeem any debt securities issued by the Company which rank pari passu with or junior to the Debentures or make any guarantee payment with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior to the Debentures; provided, however, that, notwithstanding the foregoing, the Company may make payments pursuant to its obligations under the Preferred Securities Guarantee; and (c) the Company shall not redeem, purchase or acquire less than all of the outstanding Debentures or any of the Preferred Securities.

ARTICLE V

PARTICULAR COVENANTS OF THE COMPANY

5.1 Covenants as to Purchases.

Except upon the exercise by the Company of its right to redeem the Debentures pursuant to Section 3.2 upon the occurrence and continuation of a Special Event or pursuant to Section 3.3(b), prior to [_____], the Company shall not purchase any Debentures, in whole or in part, from the Trust.

5.2 Limitation on Additional Junior Indebtedness.

Anything in the Indenture to the contrary notwithstanding, the Company shall not, and it shall not cause or permit any Affiliate of the Company to, incur, issue or be obligated on any Additional Junior Indebtedness, either directly or indirectly, by way of guarantee, suretyship or otherwise, other than:

(a) Additional Junior Indebtedness that, by its terms, is expressly stated to be junior and subordinate in all respects to the Debentures; or

(b) Additional Junior Indebtedness that, by its terms, is expressly stated to be pari passu and rank equally in all respects with the Debentures; provided, however, that neither the Company nor any of its Affiliates shall incur, issue or otherwise become obligated on any Additional Junior Indebtedness pursuant to this Section 5.2(b) unless the quotient of "X" divided by "Y" is less than 0.60, where "X" and "Y" are calculated as described in Section 5.2(c) and 5.2(d), respectively.

(c) As used in Section 5.2(b), "X" means the sum of the following:

(i) the aggregate liquidation amount or principal amount, as the case may be, of the Debentures Outstanding at the time of the proposed issuance of such Additional Junior Indebtedness pursuant to Section 5.2(b), plus

(ii) the aggregate liquidation amount or principal amount, as the case may be, of any Additional Junior Indebtedness previously issued and outstanding at the time of the proposed issuance of such Additional Junior Indebtedness pursuant to Section 5.2(b), excluding any such Additional Junior Indebtedness that, by its terms, is expressly stated to be junior and subordinate in all respects to the Debentures, plus

(iii) the aggregate liquidation amount or principal amount, as the case may be, of the Additional Junior Indebtedness proposed to be issued or otherwise incurred pursuant to Section 5.2(b), plus

(iv) the principal amount of any Senior Indebtedness of the Company outstanding at the time of the proposed issuance of such Additional Junior Indebtedness pursuant to Section 5.2(b) and that has a maturity or is otherwise due and payable by the Company on a date twelve (12) months or more after the time of the proposed issuance of such Additional Junior Indebtedness pursuant to Section 5.2(b).

(d) As used in Section 5.2(b), "Y" means the sum of the following: -

(i) the sum of (y) the "common stockholders' equity" of the Company, plus (z) the "perpetual preferred stock" of the Company, each calculated on a consolidated basis and in accordance with Appendix A to Part 225 (Capital adequacy guidelines for bank-holding companies; risk-based measure) of Federal Reserve Regulation Y (12 CFR 225, as amended, as in effect at the date

of execution of this Indenture), without regard to limitations therein with respect to the inclusion of perpetual preferred stock (whether cumulative or noncumulative) in Tier 1 capital, determined as of the last day of the month immediately preceding the month during which the proposed issuance of the Additional Junior Indebtedness pursuant to Section 5.2(b) is scheduled to occur (provided, however, that in no event shall any portion of the Debentures, the Additional Junior Indebtedness or the Senior Indebtedness described in Section 5.2(c) also be included in "Y" under this Section 5.2(d)), plus

(ii) any other preferred stock of the Company that does not otherwise qualify as "perpetual preferred stock" and is not included in clause (d)(i) above, plus

(iii) the aggregate liquidation amount or principal amount, as the case may be, of any Additional Junior Indebtedness, which by its terms is expressly stated to be junior and subordinate in all respects to the Debentures and which was previously issued and outstanding at the time of the proposed issuance of such Additional Junior Indebtedness pursuant to Section 5.2(b).

(e) Notwithstanding the foregoing, the limitations of this Section 5.2 shall not in any way preclude the Company from merging with or into, or from acquiring or being acquired by, another Person (including by way of merger, stock purchase or acquisition of assets) that is not an Affiliate of the Company in an arm's length transaction entered into in good faith, even though the pro forma consolidated balance sheet of the surviving Person immediately following the consummation of such merger, or of the acquiror immediately following the completion of such acquisition transaction, may include Additional Junior Indebtedness in amounts in excess of amounts that would otherwise be permitted by this Section 5.2; provided, however, that thereafter the limitations on future incurrences of Additional Junior Indebtedness in this Section 5.2 shall continue to apply to the Company (in the event that it is the surviving corporation in such merger transaction or the acquiror in such acquisition transaction) and shall apply to the other Person (in the event that it is the surviving corporation in such merger transaction or the acquiror in such acquisition transaction) whether or not such other Person is expressly made a party hereto.

ARTICLE VI

EVENT OF DEFAULT

6.1 Additional Event of Default.

In addition to the Events of Default events set forth in the Indenture, an "Event of Default" with respect to the Debentures will be deemed to occur if the Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (i) the distribution of Debentures to holders of Trust Securities in liquidation of

their interests in the Trust; (ii) the redemption of all of the outstanding Trust Securities of the Trust; or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Trust Agreement.

ARTICLE VII

FORM OF DEBENTURE AND ORIGINAL ISSUE

7.1 Form of Debenture.

The Debenture and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the forms contained as Exhibit A to this Indenture, attached hereto and incorporated herein by reference.

7.2 Original Issue of Debentures.

Debentures in the aggregate principal amount of \$[_____] may, upon execution of this Indenture, be executed by the Company and delivered to the Trustee for authentication. If the Underwriters exercise their Option and there is an Option Closing Date (as such terms are defined in the Underwriting Agreement, dated [_____] by and among the Company, the Trust and Stifel, Nicolaus & Company, Incorporated as Representative of the several Underwriters named therein) then, on such Option Closing Date, Debentures in the additional aggregate principal amount of up to \$[_____] may be executed by the Company and delivered to the Trustee for authentication. The Trustee shall thereupon authenticate and deliver said Debentures to or upon the written order of the Company, signed by its President, or any Vice President and its Chief Financial Officer or the Treasurer or an Assistant Treasurer, without any further action by the Company.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed, all as of the day and year first above written.

FIRST MERCHANTS CORPORATION

By: _____

Name: _____

Title: _____

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,

As Trustee

By: _____

Name: _____

Title: _____

EXHIBIT A

(FORM OF FACE OF DEBENTURE)

FIRST MERCHANTS CORPORATION

[_____] % JUNIOR SUBORDINATED DEBENTURE

DUE [_____]

No. ____

\$ _____

CUSIP No. _____

First Merchants Corporation, an Indiana corporation (the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to, [_____] or registered assigns, the principal sum of _____ (\$ _____) on [_____] (the "Stated Maturity"), and to pay interest on said principal sum from [_____] or from the most recent interest payment date (each such date, an "Interest Payment Date") to which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on the last day of March, June, September and December of each year commencing [_____] , at the rate of [_____] % per annum until the principal hereof shall have become due and payable, and on any overdue principal 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 a 360-day year of twelve 30-day months. The amount of interest for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. In the event that any date on which interest is payable on this Debenture is not a business day, then payment of interest 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) except that, if such business day is in the next succeeding calendar year, payment of such interest will be made on the immediately preceding business day, in each case, with the same force and effect as if made on such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the person in whose name this Debenture (or one or more Predecessor Debentures, 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 close of business on the business day next preceding such Interest Payment Date unless otherwise provided in the Indenture. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered holders on such regular record date and may be paid to the Person in whose name this Debenture (or one or more Predecessor Debentures) 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 thereof shall be fixed by the Trustee for the payment of such defaulted interest, notice thereof shall be given to the registered holders of the Debentures 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 or quotation system on or in which the Debentures may be listed or quoted, and upon such

notice as may be required by such exchange, all as more fully provided in the Indenture. The principal of and the interest on this Debenture shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered holder at such address as shall appear in the Debenture Register. Notwithstanding the foregoing, so long as the holder of this Debenture is the Property Trustee, the payment of the principal of and interest on this Debenture shall be made at such place and to such account as may be designated by the Trustee.

The Stated Maturity may be shortened at any time by the Company to any date not earlier than [_____], subject to the Company having received prior approval of the Federal Reserve if then required under applicable capital guidelines, policies or regulations of the Federal Reserve.

The indebtedness evidenced by this Debenture is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness, and this Debenture is issued subject to the provisions of the Indenture with respect thereto. Each holder of this Debenture, 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 Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Debenture 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 Debenture are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

[Signatures on next page.]

IN WITNESS WHEREOF, the Company has caused this instrument to be executed.

Dated [_____]

FIRST MERCHANTS CORPORATION

By: _____

Name: _____

Title: _____

Attest:

By: _____

Name: _____

Title: _____

[FORM OF CERTIFICATE OF AUTHENTICATION]

CERTIFICATE OF AUTHENTICATION

This is one of the Debentures described in the within-mentioned Indenture.

Dated: _____, 20__

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee or Authentication Agent

By: _____

Name: _____

Title: _____

[FORM OF REVERSE OF DEBENTURE]

[_____] % JUNIOR SUBORDINATED DEBENTURE DUE [____]

(CONTINUED)

This Debenture is one of the subordinated debentures of the Company (herein sometimes referred to as the "Debentures"), all issued or to be issued under and pursuant to an Indenture dated as of [_____] (the "Original Indenture") duly executed and delivered between the Company and First Union Trust Company, National Association, as Trustee (the "Trustee"), as supplemented by a First Supplemental Indenture dated as of [_____] (the "Supplemental Indenture" and, together with the Original Indenture, the "Indenture") duly executed and delivered between the Company and First Union Trust Company, National Association, as 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 Debentures. The Debentures are limited in aggregate principal amount as specified in the Indenture.

Because of the occurrence and continuation of a Special Event (as defined in the Indenture), in certain circumstances, this Debenture may become due and payable at the principal amount together with any interest accrued thereon (the "Redemption Price"). The Redemption Price shall be paid prior to 12:00 noon, Eastern Standard Time, on the date of such redemption or at such earlier time as the Company determines. The Company shall have the right as set forth in the Indenture to redeem this Debenture at the option of the Company, without premium or penalty, in whole or in part at any time on or after [_____] (an "Optional Redemption"), or at any time in certain circumstances upon the occurrence of a Special Event, at a Redemption Price equal to 100% of the principal amount hereof plus any accrued but unpaid interest hereon, to the date of such redemption. Any redemption pursuant to this paragraph shall be made upon not less than 30 days nor more than 60 days notice, at the Redemption Price. The Redemption Price shall be paid at the time and in the manner provided therefor in the Indenture. If the Debentures are only partially redeemed by the Company pursuant to an Optional Redemption, the Debentures shall be redeemed pro rata or by lot or by any other method utilized by the Trustee as described in the Indenture.

In the event of redemption of this Debenture in part only, a new Debenture or Debentures for the unredeemed portion hereof shall be issued in the name of the holder hereof upon the cancellation hereof.

In case an Event of Default (as defined in the Indenture) shall have occurred and be continuing, the principal of all of the Debentures 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 not less than a majority in aggregate principal amount of the Debentures 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 any supplemental indenture or of modifying in any manner the rights of the holders of the Debentures; provided, however, that no such supplemental indenture shall (i) extend

the fixed maturity of the Debentures except as provided in the Indenture, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, without the consent of the holder of each Debenture so affected; or (ii) reduce the aforesaid percentage of Debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of each Debenture then Outstanding and affected thereby. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Debentures at the time Outstanding, on behalf of all of the holders of the Debentures, 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 interest on any of the Debentures. Any such consent or waiver by the registered holder of this Debenture (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Debenture and of any Debenture issued in exchange hereof 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 Debenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal and interest on this Debenture at the time and place and at the rate and in the money herein prescribed.

Provided certain conditions are met, the Company shall have the right at any time during the term of the Debentures and from time to time to extend the interest payment period of such Debentures for up to 20 consecutive quarters (each, an "Extended Interest Payment 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 Debentures to the extent that payment of such interest is enforceable under applicable law). Before the termination of any such Extended Interest Payment Period, so long as no Event of Default shall have occurred and be continuing, the Company may further extend such Extended Interest Payment Period, provided that such Extended Interest Payment Period together with all such further extensions thereof shall not exceed 20 consecutive quarters, extend beyond the Stated Maturity or end on a date other than an Interest Payment Date. At the termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest and any additional amounts then due and subject to the foregoing conditions, the Company may commence a new Extended Interest Payment Period.

As provided in the Indenture and subject to certain limitations therein set forth, this Debenture is transferable by the registered holder hereof on the Debenture Register of the Company, upon surrender of this Debenture 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 registered holder hereof or his attorney duly authorized in writing, and thereupon one or more new Debentures of authorized denominations and for the same aggregate principal amount shall be issued to the designated transferee or transferees. No service charge shall be made for any such 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 Debenture, the Company, the Trustee, any paying agent and the Debenture Registrar may deem and treat the registered holder

hereof as the absolute owner hereof (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Debenture Registrar) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Debenture Registrar shall be affected by any notice to the contrary.

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

The Debentures are issuable only in registered form without coupons in denominations of \$[___] and any integral multiple thereof.

All terms used in this Debenture that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

[Bingham Summers Welsh & Spilman, LLP]

December 21, 2001

Board of Directors
First Merchants Corporation
200 East Jackson Street
Muncie, Indiana 47305

RE: Registration Statement on Form S-3

Gentlemen:

This opinion is delivered in connection with the Registration Statement on Form S-3 (the "Registration Statement") to be filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act") by First Merchants Corporation, an Indiana corporation (the "Company"), and First Merchants Capital Trust I, First Merchants Capital Trust II, and First Merchants Capital Trust III, each a business trust formed under the Delaware Business Trust Act (each, a "Trust" and collectively, the "Trusts") effecting the registration under the Act of up to an aggregate of \$70,000,000 of (a) junior subordinated debentures of the Company (the "Debentures"), (b) preferred securities of the Trusts (the "Trust Preferred Securities") and (c) guarantees by the Company of the Trust Preferred Securities pursuant to a Preferred Securities Guarantee Agreement (the "Guarantee") to be executed by the Company for the benefit of the holders of the Trust Preferred Securities.

In connection with the foregoing, we have reviewed originals or copies, certified or otherwise identified to our satisfaction, of the following documents and such other documentation as we have deemed important for the purpose of rendering the opinions hereinafter expressed:

- (a) The Registration Statement, together with attached exhibits including the following:
 - (i) The proposed form of Amended and Restated Trust Agreement covering the Trusts (the "Amended and Restated Trust Agreement");

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December 21, 2001
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- (ii) The proposed form of Indenture covering the Debentures, as supplemented by the proposed form of First Supplemental Indenture (the "Indenture");
- (iii) The proposed form of the Guarantee;
- (b) The Company's Articles of Incorporation and Code of Bylaws, as amended to date; and
- (c) Corporate proceedings of the Company relating to the Registration Statement.

For purposes of this opinion, we have examined the above documents and have made such examination of Indiana law and the laws of the United States as we have deemed necessary and appropriate; provided, however, we are qualified to practice law only in the State of Indiana and we do not purport to be experts on, or to express an opinion herein concerning, the law of any jurisdiction other than the State of Indiana and the laws of the United States of general application to transactions in the State of Indiana.

We have relied upon the above documents as to matters of fact. In addition, as to certain facts material to our opinion which we did not independently establish or verify, we have relied upon certain corporate records and documents of the Company certified as true and correct by the Secretary of the Company. Other than as specifically set forth herein, it is understood that we have not undertaken any independent investigation to determine the existence or absence of such facts.

We have assumed with respect to all documents examined by us the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to the originals of all documents submitted to us as certified, conformed, photostatic or telefacsimile copies.

Based solely on the foregoing examination, and subject to and relying on the assumptions and other matters referred to above and subject to the limitations and qualifications contained herein, we are of the opinion that, when, :

- (a) the Registration Statement has become effective under the Act;
- (b) the Amended and Restated Trust Agreement has been duly authorized, executed and delivered;
- (c) the Trust Preferred Securities have been duly authorized, issued, delivered and paid for in accordance with the Amended and Restated Trust Agreement;
- (d) the Guarantee has been duly authorized, executed and delivered;

- (e) the Indenture has been duly authorized, executed and delivered; and
- (f) the Debentures have been duly authorized, authenticated, issued, delivered and paid for as contemplated by the Indenture and the Registration Statement,

the Debentures and the Guarantee will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to (x) the effects, restrictions and limitations of any applicable state and/or federal bankruptcy, insolvency, readjustment of debt, receivership, fraudulent conveyance and equitable subordination, reorganization, moratorium, equity of redemption, or similar laws now or hereafter in effect governing, affecting or relating to the rights and remedies of creditors, debtors or secured parties generally, (y) the effect of general principles of equity and matters of public policy (regardless of whether such enforceability is considered in a proceeding in equity or at law), and (z) the qualification that the remedy of specific performance and injunctive or other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

We understand that you have received an opinion regarding the Trusts and the Trust Preferred Securities from Richards, Layton & Finger, P.A., special Delaware counsel for the Trusts, in connection with the Registration Statement. We are expressing no opinion with respect to the matters contained in such opinion.

We hereby consent to the use of this opinion as an exhibit to the Registration Statement and any Prospectus Supplement under the caption "Legal Opinions." In giving this consent, we do not thereby admit that we are "experts" within the meaning of Section 11 of the Act, or that we come within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Bingham Summers Welsh & Spilman, LLP

[Richards, Layton & Finger, P.A.]

December 21, 2001

First Merchants Corporation
200 East Jackson Street
Muncie, Indiana 47305

Re: First Merchants Capital Trust I, II and III

Ladies and Gentlemen:

We have acted as special Delaware counsel for First Merchants Corporation, an Indiana corporation (the "Company"), First Merchants Capital Trust I, a Delaware business trust ("Trust I"), First Merchants Capital Trust II, a Delaware business trust ("Trust II"), and First Merchants Capital Trust III, a Delaware business trust ("Trust III") (Trust I, Trust II and Trust III are hereinafter collectively referred to as the "Trusts" and sometimes hereinafter individually referred to as a "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

(a) The Certificate of Trust of Trust I, as filed with the office of the Secretary of State of the State of Delaware (the "Secretary of State") on December 12, 2001;

(b) The Certificate of Trust of Trust II, as filed with the Secretary of State on December 12, 2001;

(c) The Certificate of Trust of Trust III, as filed with the Secretary of State on December 12, 2001;

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(d) The Trust Agreement of Trust I, dated as of December 12, 2001, among the Company and the trustees named therein;

(e) The Trust Agreement of Trust II, dated as of December 12, 2001, among the Company and the trustees named therein;

(f) The Trust Agreement of Trust III, dated as of December 12, 2001, among the Company and the trustees named therein;

(g) The Registration Statement (the "Registration Statement") on Form S-3, including a preliminary prospectus (the "Prospectus") relating to the trust preferred securities of the Trusts representing preferred undivided beneficial interests in the assets of the Trusts (each, a "Preferred Security" and collectively, the "Preferred Securities"), filed by the Company and the Trusts with the Securities and Exchange Commission on December 21, 2001;

(h) A form of Amended and Restated Trust Agreement for each of the Trusts, to be entered into between the Company, the trustees of the Trust named therein, and the holders, from time to time, of the undivided beneficial interests in the assets of such Trust (collectively, the "Trust Agreements" and individually, a "Trust Agreement"), attached as an exhibit to the Registration Statement; and

(i) A Certificate of Good Standing for each of the Trusts, dated December 20, 2001, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Trust Agreements.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (i) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (i) above) that is referred to in or incorporated by reference into the documents reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed

herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that each of the Trust Agreements will constitute the entire agreement among the parties thereto with respect to the subject matter

thereof, including with respect to the creation, operation and termination of the applicable Trust, and that the Trust Agreements and the Certificates of Trust will be in full force and effect and will not be amended, (ii) except to the extent provided in paragraph 1 below, the due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its organization or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom a Preferred Security is to be issued by the Trusts (collectively, the "Preferred Security Holders") of a Preferred Security Certificate for such Preferred Security and the payment for such Preferred Security, in accordance with the Trust Agreements and the Registration Statement, and (vii) that the Preferred Securities are authenticated, issued and sold to the Preferred Security Holders in accordance with the Trust Agreements and the Registration Statement. We have not participated in the preparation of the Registration Statement or the Prospectus and assume no responsibility for their contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder which are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. Each of the Trusts has been duly created and is validly existing in good standing as a business trust under the Business Trust Act.

2. The Preferred Securities of each Trust will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the applicable Trust.

3. The Preferred Security Holders, as beneficial owners of the applicable Trust, will 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. We note that the Preferred Security Holders may be obligated to make payments as set forth in the Trust Agreement.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. We hereby consent to the use of our name under the heading "Legal Opinions" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Richards, Layton & Finger, P.A.

EAM

COMPUTATION OF RATIO OF EARNINGS TO COMBINED FIXED CHARGES

	Nine Months Ended 9/30 2001	Year Ended 12/31 2000	Year Ended 12/31 1999	Year Ended 12/31 1998	Year Ended 12/31 1997	Year Ended 12/31 1996
Pretax income	25,534	29,908	29,187	27,463	25,187	23,050
Fixed charges:						
Interest on Deposits	43,691	49,607	38,539	39,873	37,370	33,449
Other Interest	7,874	10,939	8,359	4,592	4,022	3,685
Fixed charges including interest on deposits	51,565	60,546	46,898	44,465	41,392	37,134
Total earnings including interest on deposits	77,099	90,454	76,085	71,928	66,579	60,184
Total earnings excluding interest on deposits	33,408	40,847	37,546	32,055	29,209	26,735
Fixed charges excluding interest on deposits	7,874	10,939	8,359	4,592	4,022	3,685
Ratio of Earnings on Combined Fixed Charges:						
Including interest on deposits	1.50	1.49	1.62	1.62	1.61	1.62
Excluding interest on deposits	4.24	3.73	4.49	6.98	7.26	7.26

Consent of Independent Auditors

We consent to the incorporation by reference in this Registration Statement on Form S-3 of First Merchants Corporation of our reports dated January 8, 1999 on Jay Financial Corporation, and January 15, 1999 on Anderson Community Bank, relating to the statements of income, changes in shareholders' equity and cash flows of those organizations for the year ended December 31, 1998, included in First Merchants Corporation's Annual Report on Form 10-K for the year ended December 31, 2000, and of our report, dated January 25, 2001, on the consolidated financial statements of Lafayette Bancorporation as of December 31, 2000 and 1999 and for each of the three years in the period ended December 31, 2000, included in First Merchants Corporation's Current Report on Form 8-K filed December 21, 2001. We also consent to the reference to our firm appearing under the heading "Experts" in the Prospectus.

CROWE, CHIZEK AND COMPANY LLP
December 21, 2001
Indianapolis, Indiana

Consent of Independent Auditors

We consent to the incorporation by reference in this Registration Statement on Form S-3 of First Merchants Corporation of our report, dated January 22, 2001, except for note 19 as to which the date is February 8, 2001, on the consolidated financial statements of First Merchants Corporation as of December 31, 2000 and 1999 and for each of the three years in the period ended December 31, 2000. We also consent to the reference to our firm appearing under the heading "Experts" in the Prospectus.

BKD, LLP
December 21, 2001
Indianapolis, Indiana