

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

FORM 8-K

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

Date of Report (Date of earliest event reported): January 18, 2018

**UNITED COMMUNITY BANKS, INC.**

(Exact name of registrant as specified in its charter)

Georgia  
(State or other jurisdiction of  
incorporation)

No. 001-35095  
(Commission File Number)

No. 58-1807304  
(IRS Employer  
Identification No.)

125 Highway 515 East  
Blairsville, Georgia 30512  
(Address of principal executive offices)

Registrant's telephone number, including area code:  
(706) 781-2265

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

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

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

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

Emerging growth company

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

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

On January 18, 2018, United Community Banks, Inc. (the “Company”) entered into an Indenture (the “Indenture”) and a First Supplemental Indenture (the “Supplemental Indenture”) with The Bank of New York Mellon Trust Company, N.A., as trustee, under which the Company issued \$100,000,000 of its 4.500% Fixed to Floating Rate Subordinated Notes due January 30, 2028 (the “Notes”). As previously disclosed, the Notes were offered and sold pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-203548) (the “Registration Statement”), including a preliminary prospectus supplement dated January 9, 2018 and a final prospectus supplement dated January 10, 2018 to the prospectus contained in the Registration Statement.

The description of the Indenture and the Supplemental Indenture is a summary and is qualified in its entirety by reference to the full text of the Indenture and the Supplemental Indenture, which are attached hereto as Exhibits 4.1 and 4.2 and are incorporated by reference into this Item 1.01.

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

The information included in Item 1.01 with respect to the Indenture and the Supplemental Indenture is incorporated by reference into this Item 2.03.

**Item 8.01 Financial Statements and Exhibits.**

The validity of the Notes offered in its public offering was passed upon for the Company by Troutman Sanders LLP. The opinion is attached hereto as Exhibit 5.1.

**Item 9.01 Financial Statements and Exhibits.**

- (d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
<a href="#">4.1</a>	<a href="#">Indenture, dated as of January 18, 2018, by and between the Company and The Bank of New York Mellon, N.A., as trustee</a>
<a href="#">4.2</a>	<a href="#">First Supplemental Indenture, dated as of January 18, 2018, by and between the Company and The Bank of New York Mellon, N.A., as trustee</a>
<a href="#">4.3</a>	<a href="#">Form of 4.500% Fixed to Floating Rate Subordinated Notes due January 30, 2028 (included as Exhibit A to Exhibit 4.2)</a>
<a href="#">5.1</a>	<a href="#">Opinion and Consent of Troutman Sanders LLP</a>

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**SIGNATURES**

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

**UNITED COMMUNITY BANKS, INC.**

By: /s/ Jefferson Harralson  
Jefferson Harralson  
Executive Vice President and  
Chief Financial Officer

Date: January 23, 2018

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UNITED COMMUNITY BANKS, INC.

INDENTURE

DATED AS OF JANUARY 18, 2018

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
TRUSTEE, REGISTRAR, PAYING AGENT AND SERVICE AGENT

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**CROSS REFERENCE TABLE**

<b>Trust Indenture Act Section</b>		<b>Indenture Section</b>
Section 310	(a)(1)	7.10
	(a)(2)	7.10
	(a)(3)	N/A
	(a)(4)	N/A
	(a)(5)	7.10
	(b)	7.10
Section 311	(a)	7.11
	(b)	7.11
	(c)	N/A
Section 312	(a)	2.6
	(b)	10.3
	(c)	10.3
Section 313	(a)	7.6
	(b)(1)	7.6
	(b)(2)	7.6
	(c)(1)	7.6
	(d)	7.6
Section 314	(a)	4.2, 10.5
	(b)	N/A
	(c)(1)	10.4
	(c)(2)	10.4
	(c)(3)	N/A
	(d)	N/A
	(e)	10.5
(f)	N/A	
Section 315	(a)	7.1
	(b)	7.5
	(c)	7.1
	(d)	7.1
	(e)	6.14
Section 316	(a)	2.10
	(a)(1)(A)	6.12
	(a)(1)(B)	6.13
	(b)	6.8
Section 317	(a)(1)	6.3
	(a)(2)	6.4
	(b)	2.5
Section 318	(a)	10.1

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\* This Cross Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

Indenture dated as of January 18, 2018 between **UNITED COMMUNITY BANKS, INC.**, a Georgia corporation (the “Company”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national association, as trustee (the “Trustee”), registrar, paying agent and service agent.

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Securities issued under this Indenture:

## **ARTICLE I**

### **DEFINITIONS AND INCORPORATION BY REFERENCE**

#### **SECTION 1.1 Definitions.**

“Additional Amounts” means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes imposed on Holders specified herein or therein and which are owing to such Holders.

“Affiliate” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities or by agreement or otherwise.

“Agent” means any Registrar, Paying Agent, Service Agent or any other agent appointed by the Company with respect to any Series of Securities.

“Authorized Newspaper” means a newspaper in an official language of the country of publication customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in the place in connection with which the term is used or in the financial community of such place. If it shall be impractical in the opinion of the Trustee to make any publication of any notice required hereby in an Authorized Newspaper, any publication or other notice in lieu thereof that is made or given by the Trustee shall constitute a sufficient publication of such notice.

“Bearer” means anyone in possession from time to time of a Bearer Security.

“Bearer Security” means any Security, including any interest coupon appertaining thereto, that does not provide for the identification of the Holder thereof.

“Board of Directors” means the Board of Directors of the Company or any duly authorized committee thereof.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been adopted by the Board of Directors or pursuant to authorization by the Board of Directors and to be in full force and effect on the date of the certificate and delivered to the Trustee.

“Business Day” means, unless otherwise provided by Board Resolution and Officers’ Certificate or supplemental indenture hereto for a particular Series, any day except a Saturday, Sunday or a legal holiday in the City of New York on which banking institutions are authorized or required by law, regulation or executive order to close.

“Capital Stock” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock.



“Company” means the party named as such in the preamble to this Indenture until a successor replaces it and thereafter means the successor.

“Company Order” or “Company Request” mean, respectively, a written order or request, as the case may be, signed in the name of the Company by two Officers, one of whom must be the Company’s principal executive officer, principal financial officer or principal accounting officer, and delivered to the Trustee.

“Corporate Trust Office” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Depository” means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act; and if at any time there is more than one such person, “Depository” as used with respect to the Securities of any Series shall mean the Depository with respect to the Securities of such Series.

“Designated Senior Indebtedness” means any of the senior indebtedness that expressly provides that it is “designated senior indebtedness” for purposes of this Indenture (provided that the instrument, agreement or other document creating or evidencing such Senior Indebtedness may place limitations and conditions on the right of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness).

“Discount Security” means any Security that provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2.

“Dollars” and “\$” means the currency of The United States of America.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

“Global Security” or “Global Securities” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“Holder” or “Securityholder” means a person in whose name a Security is registered or the Bearer of a Bearer Security.

“Indebtedness” means, with respect to any person, and without duplication, (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such person or to only a portion thereof) (other than any account payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services), (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such person with respect to letters of credit, bank guarantees or bankers’ acceptances, (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such person and all obligations and other liabilities (contingent or otherwise) under any lease or related document (including a purchase agreement) in connection with the lease of real property which provides that such person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the lessor and the obligations of such person under such lease or related document to purchase or to cause a third party to purchase such leased property, (d) all obligations of such person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement, (e) all direct or indirect guaranties or similar agreements by such person in respect of, and obligations or liabilities (contingent or otherwise) of such person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of indebtedness, obligations or liabilities of another person of the kind described in clauses (a) through (d), (f) any indebtedness or other obligations described in clauses (a) through (e) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such person and (g) any and all refinancings, replacements, deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

“Indenture” means this Indenture as amended or supplemented, from time to time and shall include the form and terms of particular Series of Securities established as contemplated hereunder.

“interest” with respect to any Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

“Maturity,” when used with respect to any Security or installment of principal thereof, means the date on which the principal of such Security or such installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, or otherwise.

“Officer” means the Chief Executive Officer, the President, any Vice President, the Treasurer, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Company.

“Officers’ Certificate” means a certificate signed by two Officers, one of whom must be the Company’s principal executive officer, principal financial officer or principal accounting officer.

“Opinion of Counsel” means a written opinion of legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company.

“person” means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“principal” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on, and any Additional Amounts in respect of, the Security.

“Representative” means the (a) indenture trustee or other trustee, agent or representative for any Senior Indebtedness or (b) with respect to any Senior Indebtedness that does not have any such trustee, agent or other representative, (i) in the case of such Senior Indebtedness issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Senior Indebtedness, any holder or owner of such Senior Indebtedness acting with the consent of the required persons necessary to bind such holders or owners of such Senior Indebtedness and (ii) in the case of all other such Senior Indebtedness, the holder or owner of such Senior Indebtedness.

“Responsible Officer” means any officer of the Trustee in its Corporate Trust Office and also means, with respect to a particular corporate trust matter, any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with a particular subject.

“SEC” means the Securities and Exchange Commission.

“Securities” means the debentures, notes or other debt instruments of the Company of any Series authenticated and delivered under this Indenture.

“Senior Indebtedness” means the principal, premium, if any, interest, including any interest accruing after bankruptcy, and rent or termination payment on or other amounts due on the Company’s current or future Indebtedness, whether created, incurred, assumed, guaranteed or in effect guaranteed by the Company, including any deferrals, renewals, extensions, refundings, amendments, modifications or supplements to the above. However, Senior Indebtedness does not include: (i) Indebtedness that expressly provides that it shall not be senior in right of payment to the Securities or expressly provides that it is on the same basis or junior to the Securities; (ii) the Company’s Indebtedness to any of the Company majority-owned Subsidiaries; and (iii) the Securities.

“Series” or “Series of Securities” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 and 2.2 hereof.

“Stated Maturity” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“Subsidiary” of any specified person means any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of that person or a combination thereof.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code Sections 77aaa-77bbb) as in effect on the date of this Indenture; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “TIA” means, to the extent required by any such amendment, the Trust Indenture Act as so amended.

“Trustee” means the person named as the “Trustee” in the preamble to this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean each person who is then a Trustee hereunder, and if at any time there is more than one such person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“U.S. Government Obligations” means securities which 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, and which in the case of (i) and (ii) are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation evidenced by such depository receipt.

## SECTION 1.2 Other Definitions.

Term	Defined in Section
“Applicable Law”	4.1
“Authorized Officers”	10.2
“Bankruptcy Law”	6.1
“Custodian”	6.1
“Electronic Means”	10.2
“Event of Default”	6.1
“Instructions”	10.2
“Legal Holiday”	10.7
“mandatory sinking fund payment”	11.1
“optional sinking fund payment”	11.1
“Paying Agent”	2.4
“Payment Blockage Date”	12.2
“Registrar”	2.4
“Service Agent”	2.4
“Specified Law”	10.17
“successor person”	5.1

## SECTION 1.3 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“indenture securities” means the Securities.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company and any successor obligor upon the Securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein are used herein as so defined.

## SECTION 1.4 Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles;
- (c) references to “generally accepted accounting principles” and “GAAP” shall mean generally accepted accounting principles in effect as of the time when and for the period as to which such accounting principles are to be applied;

- (d) “or” is not exclusive;
- (e) words in the singular include the plural, and in the plural include the singular; and
- (f) provisions apply to successive events and transactions.

## **ARTICLE II**

### **THE SECURITIES**

#### **SECTION 2.1 Issuable in Series.**

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth or determined in the manner provided in a Board Resolution and Officers’ Certificate or supplemental indenture detailing the adoption of the terms thereof pursuant to authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution and Officers’ Certificate or supplemental indenture detailing the adoption of the terms thereof pursuant to authority granted under a Board Resolution may provide for the method by which specified terms (such as interest rate, maturity date, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, provided that all Series of Securities shall be equally and ratably entitled to the benefits of this Indenture, but all Securities issued hereunder shall be subordinate and junior in right of payment, to the extent and in the manner set forth in Article XII, to all Senior Indebtedness of the Company.

#### **SECTION 2.2 Establishment of Terms of Series of Securities.**

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2.1 and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2.2 through 2.2.17) by or pursuant to a Board Resolution and set forth in an Officers’ Certificate or supplemental indenture delivered pursuant to Section 9.1(e):

- 2.2.1 the title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);
- 2.2.2 the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;

2.2.3 any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.7, 2.8, 2.11, 3.6 or 9.6);

- 2.2.4 the date or dates on which the principal of the Securities of the Series is payable;

2.2.5 the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any interest payment date;

2.2.6 the place or places where the principal of and interest, if any, on the Securities of the Series shall be payable, where the Securities of such Series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of such Series and this Indenture may be served, and the method of such payment, if by wire transfer, mail or other means;

2.2.7 if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;

2.2.8 the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

2.2.9 the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof and other detailed terms and provisions of such repurchase obligations;

2.2.10 if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;

2.2.11 the forms of the Securities of the Series in bearer or fully registered form (and, if in fully registered form, whether the Securities will be issuable as Global Securities);

2.2.12 if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2;

2.2.13 the provisions, if any, relating to any security provided for the Securities of the Series;

2.2.14 any addition to or change in the Events of Default which applies to any Securities of the Series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;

2.2.15 any addition to or change in the covenants set forth in Articles IV or V which applies to Securities of the Series;

2.2.16 any other terms of the Securities of the Series (which may modify or delete any provision of this Indenture insofar as it applies to such Series); and

2.2.17 any Depositories, Agents, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein.

All Securities of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution and Officers' Certificate or supplemental Indenture referred to above, and the authorized principal amount of any Series may not be increased to provide for issuances of additional Securities of such Series, unless otherwise provided in such Board Resolution and Officers' Certificate or supplemental indenture.

### **SECTION 2.3 Execution and Authentication.**

One Officer shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution and Officers' Certificate or supplemental indenture hereto, upon receipt by the Trustee of a Company Order. Each Security shall be dated the date of its authentication unless otherwise provided by a Board Resolution and Officers' Certificate or supplemental indenture hereto.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution and Officers' Certificate or supplemental indenture hereto delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.2) shall be fully protected in relying on: (a) the Board Resolution and Officers' Certificate or supplemental indenture hereto establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 10.4, and (c) an Opinion of Counsel complying with Section 10.4.

The Trustee shall have the right to decline to authenticate and deliver any Securities of such Series: (a) if the Trustee, being advised by counsel, determines that such action may not be taken lawfully; or (b) if the Trustee in good faith by its board of directors or trustees, executive committee or a trust committee of directors and/or Vice Presidents shall determine that such action would expose the Trustee to personal liability to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

#### **SECTION 2.4 Registrar, Paying Agent and Service Agent.**

The Company shall maintain, with respect to each Series of Securities, at the place or places specified with respect to such Series pursuant to Section 2.2, an office or agency where Securities of such Series may be presented or surrendered for payment ("Paying Agent"), where Securities of such Series may be surrendered for registration of transfer or exchange ("Registrar") and where notices and demands (other than service of process) to or upon the Company in respect of the Securities of such Series and this Indenture may be served ("Service Agent"). The Registrar shall keep a register with respect to each Series of Securities and to their transfer and exchange. The Company will give prompt written notice to the Trustee of the name and address, and any change in the name or address, of each Registrar, Paying Agent or Service Agent. If at any time the Company shall fail to maintain any such required Registrar, Paying Agent or Service Agent or shall fail to furnish the Trustee with the name and address thereof, such presentations, surrenders, 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, surrenders, notices and demands.

The Company may also from time to time designate one or more co-registrars, additional paying agents or additional service agents and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain a Registrar, Paying Agent and Service Agent in each place so specified pursuant to Section 2.2 for Securities of any Series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the name or address of any such co-registrar, additional paying agent or additional service agent. The term "Registrar" includes any co-registrar; the term "Paying Agent" includes any additional paying agent; and the term "Service Agent" includes any additional service agent.

The Company hereby appoints the Trustee as the initial Registrar, Paying Agent and Service Agent for each Series of Securities unless another Registrar, Paying Agent or Service Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued.

#### **SECTION 2.5 Paying Agent to Hold Money in Trust.**

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust, for the benefit of Securityholders of any Series of Securities, or the Trustee, all money held by the Paying Agent for the payment of principal of or interest on the Series of Securities, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of Securityholders of any Series of Securities all money held by it as Paying Agent.

#### **SECTION 2.6 Securityholder Lists.**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least ten days before each interest payment date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Securityholders of each Series of Securities.

#### **SECTION 2.7 Transfer and Exchange.**

Where Securities of a Series are presented to the Registrar or a co-registrar with a request to register a transfer or to exchange them for an equal principal amount of Securities of the same Series, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trustee shall, upon Company Order, authenticate Securities. No service charge shall be made for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.11, 3.6 or 9.6).

Neither the Company nor the Registrar shall be required (a) to issue, register the transfer of, or exchange Securities of any Series for the period beginning at the opening of business fifteen days immediately preceding the delivery of a notice of redemption of Securities of that Series selected for redemption and ending at the close of business on the day of such delivery, or (b) to register the transfer of or exchange Securities of any Series selected, called or being called for redemption as a whole or the portion being redeemed of any such Securities selected, called or being called for redemption in part.

#### **SECTION 2.8 Mutilated, Destroyed, Lost and Stolen Securities.**

If any mutilated Security is surrendered to the Trustee, the Company shall execute and, upon Company Order, the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and, upon Company Order, the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.



In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

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

Every new Security of any Series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

#### **SECTION 2.9 Outstanding Securities.**

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest on a Global Security effected by the Trustee in accordance with the provisions hereof and those described in this Section as not outstanding.

If a Security is replaced pursuant to Section 2.8, it ceases to be outstanding until the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

If the Trustee or any Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of the Company) holds on the Maturity of Securities of a Series money sufficient to pay such Securities payable on that date and the Trustee or such Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture and such Securities, then on and after that date such Securities of the Series cease to be outstanding and interest on them ceases to accrue.

A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

In determining whether the Holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of a Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.2.

#### **SECTION 2.10 Treasury Securities.**

In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any request, demand, authorization, direction, notice, consent or waiver, Securities of a Series owned by the Company shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities of a Series that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded.

## **SECTION 2.11 Temporary Securities.**

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities upon a Company Order. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee, upon Company Order, shall authenticate definitive Securities of the same Series and date of maturity in exchange for temporary Securities. Until so exchanged, temporary securities shall have the same rights under this Indenture as the definitive Securities.

## **SECTION 2.12 Cancellation.**

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Securities surrendered for transfer, exchange, payment, replacement or cancellation and deliver such canceled Securities to the Company upon Company Request, unless the Company otherwise directs; provided that the Trustee shall not be required to destroy Securities. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation.

## **SECTION 2.13 Defaulted Interest.**

If the Company defaults in a payment of interest on a Series of Securities, it shall pay the defaulted interest, plus, to the extent permitted by law, any interest payable on the defaulted interest, to the persons who are Securityholders of the Series on a subsequent special record date. The Company shall fix the record date and payment date. At least 10 Business Days before the record date, the Company shall give to the Trustee and to each Securityholder of the Series a notice that states the record date, the payment date and the amount of interest to be paid. The Company may pay defaulted interest in any other lawful manner.

## **SECTION 2.14 Global Securities.**

2.14.1 Terms Of Securities. A Board Resolution and Officers' Certificate or supplemental indenture hereto shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities and the Depository for such Global Security or Securities.

2.14.2 Transfer And Exchange. Notwithstanding any provisions to the contrary contained in Section 2.7 of this Indenture and in addition thereto, any Global Security shall be exchangeable pursuant to Section 2.7 of this Indenture for Securities registered in the names of Holders other than the Depository for such Security or its nominee only if (i) such Depository notifies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time such Depository ceases to be a clearing agency registered under the Exchange Act, and, in either case, the Company fails to appoint a successor Depository registered as a clearing agency under the Exchange Act within 90 days of such event, (ii) the Company executes and delivers to the Trustee an Officers' Certificate to the effect that such Global Security shall be so exchangeable or (iii) an Event of Default with respect to the Securities represented by such Global Security shall have happened and be continuing. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Securities registered in such names as the Depository shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

Except as provided in this Section 2.14.2, a Global Security may not be transferred except as a whole by the Depository with respect to such Global Security to a nominee of such Depository, by a nominee of such Depository to such Depository or another nominee of such Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.

Neither the Trustee nor any Agent shall be under any obligation or have any duty to (i) monitor compliance with or with respect to any securities or tax laws (including, but not limited to, any United States federal or state or other securities or tax laws), and/or (ii) except as specifically provided herein, obtain documentation on any transfer or exchange of Securities.

2.14.3 Legend. Any Global Security issued hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of the Depository or a nominee of the Depository. This Security is exchangeable for Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.”

2.14.4 Acts Of Holders. The Depository, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Indenture.

2.14.5 Payments. Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of and interest, if any, on any Global Security shall be made to the Holder thereof, subject to the rights of the Holder as of a record date to receive payments of interest on the related interest payment date.

2.14.6 Consents, Declaration And Directions. The Company, the Trustee and any Agent shall, with respect to registered Securities, treat the person in whose name any Security is registered in the register maintained by the Registrar and, with respect to Bearer Securities, the Bearer thereof, as the Holder of such Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture.

2.14.7 No Liability. Neither the Trustee nor any Agent shall have any responsibility or obligation to any beneficial owner of an interest in the Global Securities, an agent member of, or a participant in, the Depository or other person with respect to the accuracy of the records of the Depository or its nominees or of any participant or member thereof, with respect to any ownership interest in the Global Securities or with respect to the delivery to any participant, agent member, beneficial owner or other person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Securities (or other security or property) under or with respect to such Securities. The rights of beneficial owners in any Global Securities shall be exercised only through the Depository, subject to its applicable rules and procedures. The Trustee and each Agent may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its agent members, participants and any beneficial owners.

#### **SECTION 2.15 CUSIP Numbers.**

The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to 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 Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

**ARTICLE III**  
**REDEMPTION**

**SECTION 3.1 Notice to Trustee.**

The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities or may covenant to redeem and pay the Series of Securities or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities. If a Series of Securities is redeemable and the Company wants or is obligated to redeem prior to the Stated Maturity thereof all or part of the Series of Securities pursuant to the terms of such Securities, it shall notify the Trustee of the redemption date and the principal amount of Series of Securities to be redeemed. The Company shall give the notice to the Trustee at least 45 days before the redemption date (or such shorter notice as may be acceptable to the Trustee).

**SECTION 3.2 Selection of Securities to be Redeemed.**

Unless otherwise indicated for a particular Series by a Board Resolution and Officers' Certificate or supplemental indenture hereto if less than all the Securities of a Series are to be redeemed, the Trustee shall select the Securities of the Series to be redeemed shall, in respect of Global Securities, be selected in accordance with the procedures of the applicable Depository. The selection shall be made from Securities of the Series outstanding not previously called for redemption. Securities of the Series and portions of them selected for redemption shall be in amounts of \$1,000 or whole multiples of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2.10, the minimum principal denomination for each Series and integral multiples thereof.

**SECTION 3.3 Notice of Redemption.**

Unless otherwise indicated for a particular Series by Board Resolution and Officers' Certificate or supplemental indenture hereto, at least 10 days but not more than 60 days before a redemption date, the Company shall give a notice of redemption to each Holder whose Securities are to be redeemed in accordance with Section 10.2.

The notice shall identify the Securities of the Series to be redeemed and shall state:

- (a) the redemption date;
- (b) the redemption price;
- (c) the name and address of the Paying Agent;
- (d) that Securities of the Series called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (e) that interest on Securities of the Series called for redemption ceases to accrue on and after the redemption date (unless the Company defaults in the payment of the redemption price);
- (f) the CUSIP number, if any; and
- (g) any other information as may be required by the terms of the particular Series or the Securities of a Series being redeemed.

At the Company's request delivered at least five Business Days' prior to the date notice of redemption is deliverable to the Holders attaching the form of notice of redemption, the Trustee shall give the notice of redemption in the Company's name and at its expense.

### **SECTION 3.4 Effect of Notice of Redemption.**

Once notice of redemption is given as provided in Section 3.3, Securities of a Series called for redemption become due and payable on the redemption date and at the redemption price. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price plus accrued interest to the redemption date, provided that installments of interest whose Stated Maturity is on or prior to the redemption date shall be payable to the Holders of such Securities (or one or more predecessor Securities) registered at the close of business on the relevant record date therefor according to their terms and the terms of this Indenture.

### **SECTION 3.5 Deposit of Redemption Price.**

On or before the redemption date, the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date.

### **SECTION 3.6 Securities Redeemed in Part.**

Upon surrender of a Security that is redeemed in part, the Trustee shall, upon Company Order, authenticate for the Holder a new Security of the same Series and the same maturity equal in principal amount to the unredeemed portion of the Security surrendered.

## **ARTICLE IV**

### **COVENANTS**

#### **SECTION 4.1 Payment of Principal and Interest.**

The Company covenants and agrees for the benefit of the Holders of each Series of Securities that it will duly and punctually pay the principal of and interest, if any, on the Securities of that Series in accordance with the terms of such Securities and this Indenture.

In order to comply with applicable tax laws (inclusive of rules, regulations and interpretations promulgated by competent authorities) related to the Securities and this Indenture in effect from time to time ("Applicable Law") that a foreign financial institution, issuer, trustee, paying agent or other party is or has agreed to be subject to, the Company agrees (i) to provide to the Trustee and the Agents sufficient information about the parties and/or transactions (including any modification to the terms of such transactions) so the Trustee and each Agent can determine whether it has tax related obligations under Applicable Law, and (ii) that the Trustee and each Agent shall be entitled to make any withholding or deduction from payments to the extent necessary to comply with Applicable Law for which the Trustee and the Agents shall not have any liability.

#### **SECTION 4.2 SEC Reports.**

The Company shall deliver to the Trustee within 15 days after it files them with the SEC 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 SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company also shall comply with the other provisions of TIA Section 314(a). Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants under this Indenture (as to which the Trustee is entitled to rely exclusively on an Officers' Certificate). The Trustee shall have no obligation to determine whether or not the Company has delivered reports in accordance with this Section 4.2.

#### **SECTION 4.3 Compliance Certificate.**

- (a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending December 31, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his/her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he may have knowledge).
- (b) The Company will, so long as any of the Securities are outstanding, deliver to the Trustee, forthwith upon becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

#### **SECTION 4.4 Stay, Extension and Usury Laws.**

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture or the Securities and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, 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 has been enacted.

#### **SECTION 4.5 Corporate Existence.**

Subject to Article V, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory), licenses and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right, license or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Holders.

#### **SECTION 4.6 Taxes.**

The Company shall pay prior to delinquency all taxes, assessments and governmental levies, except as contested in good faith and by appropriate proceedings.

### **ARTICLE V**

#### **SUCCESSORS**

#### **SECTION 5.1 When Company May Merge, Etc.**

The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its properties and assets to, any person (a "successor person") unless:

- (a) the Company is the surviving corporation or the successor person (if other than the Company) is a corporation organized and validly existing under the laws of any U.S. domestic jurisdiction and expressly assumes by supplemental indenture the Company's obligations on the Securities and under this Indenture; and
- (b) immediately after giving effect to the transaction, no Default or Event of Default, shall have occurred and be continuing.

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate and an Opinion of Counsel stating that the proposed transaction and any supplemental indenture comply with this Indenture and that all conditions precedent to the transaction and the execution of any supplemental indenture have been satisfied.

#### **SECTION 5.2 Successor Corporation Substituted.**

Upon any consolidation or merger, or any sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.1, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Securities with the same effect as if such successor person has been named as the Company herein; provided, however, that the predecessor Company in the case of a sale, conveyance or other disposition (other than a lease) shall be released from all obligations and covenants under this Indenture and the Securities.

### **ARTICLE VI**

#### **DEFAULTS AND REMEDIES**

#### **SECTION 6.1 Events of Default.**

"Event of Default," wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution and Officers' Certificate or supplemental indenture it is provided that such Series shall not have the benefit of said Event of Default:

- (a) default in the payment of any interest on any Security of that Series when it becomes due and payable, and continuance of such default for a period of 30 days (unless the entire amount of such payment is deposited by the Company with the Trustee or with a Paying Agent prior to the expiration of such period of 30 days); or
- (b) default in the payment of principal of any Security of that Series at its Maturity; or
- (c) default in the deposit of any sinking fund payment, when and as due in respect of any Security of that Series; or
- (d) default in the performance or breach of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty for which the consequences of nonperformance or breach are addressed elsewhere in this Section 6.1 and other than a covenant or warranty that has been included in this Indenture solely for the benefit of Series of Securities other than that Series), which default continues uncured for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the outstanding Securities of that Series 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 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,
  - (iv) makes a general assignment for the benefit of its creditors, or
  - (v) generally is unable to pay its debts as the same become due; or
- (f) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (i) is for relief against the Company in an involuntary case,
  - (ii) appoints a Custodian of the Company or 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 60 days; or
- (g) default under any bond, debenture, note or other evidence of Indebtedness for money borrowed by the Company or a Subsidiary of the Company having an aggregate principal amount outstanding of at least \$25,000,000, or under any mortgage, indenture or instrument; or
- (h) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution and Officers' Certificate or supplemental indenture, as contemplated by Section 2.2.

The term "Bankruptcy Law" means title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

**SECTION 6.2 Acceleration of Maturity; Rescission and Annulment.**

Unless a Board Resolution and Officers' Certificate or supplemental indenture hereto establishing or evidencing the establishment of a Series of Securities or the terms of the Securities of a Series pursuant to this Indenture shall provide otherwise, if an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing (other than an Event of Default referred to in Section 6.1(e) or (f)), then in every such case the Trustee or the Holders of not less than 25% in principal amount of the outstanding Securities of that Series may declare the principal amount (or, if any Securities of that Series are Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities) of and accrued and unpaid interest, if any, on all of the Securities of that Series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) and accrued and unpaid interest, if any, shall become immediately due and payable. If an Event of Default specified in Section 6.1(e) or (f) shall occur, the principal amount (or specified amount) of and accrued and unpaid interest, if any, on all outstanding Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

At any time after the occurrence of an Event of Default with respect to Securities of one or more Series and before a judgment or decree for payment of the money due has been obtained by the Trustee as provided below in this Article VI, the Holders of not less than a majority in aggregate principal amount of the outstanding Securities of all affected Series (voting as one class), by written notice to the Company and the Trustee may waive all defaults with respect to all affected Series, and may rescind and annul the consequences of the Event of Default, if:

- (1) the Company has paid or deposited with the Trustee a sum of money sufficient to pay



(a) all overdue installments of any interest on any Securities of such Series that have become due otherwise than by such declaration of acceleration,

(b) the principal of and any premium on any Securities of such Series which have become due otherwise than by such declaration of acceleration and, to the extent permitted by applicable law, interest thereon at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities,

(c) to the extent permitted by applicable law, interest upon installments of any interest, if any, which have become due otherwise than by such declaration of acceleration at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities, and

(d) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 7.7; and

(2) all Events of Default with respect to Securities of all affected Series other than the nonpayment of the principal of, or any premium and interest on, Securities of the affected Series that shall have become due solely by such acceleration, shall have been cured or waived as provided in Section 6.13.

No such rescission shall affect any subsequent Default or impair any right consequent thereon.

### **SECTION 6.3 Collection of Indebtedness and Suits for Enforcement By Trustee.**

The Company covenants that if:

- (a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or
- (b) default is made in the payment of principal of any Security at the Maturity thereof, or
- (c) default is made in the deposit of any sinking fund payment when and as due by the terms of a Security,

then, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and any overdue interest at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

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

If an Event of Default with respect to any Securities of any Series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such Series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### **SECTION 6.4 Trustee May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, (a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and (b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7.

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

#### **SECTION 6.5 Trustee May Enforce Claims Without Possession of Securities.**

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such 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 the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

#### **SECTION 6.6 Application of Money Collected.**

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Trustee under Section 7.7; and

Second: To the payment of the amounts then due and unpaid for principal of and interest on the Securities 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 Securities for principal and interest, respectively; and

Third: To the Company.

#### **SECTION 6.7 Limitation on Suits.**

No Holder of any Security of any Series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that Series;
- (b) the Holders of not less than 25% in aggregate principal amount of the outstanding Securities of that Series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders have offered to the Trustee satisfactory indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the outstanding Securities of that Series;

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

#### **SECTION 6.8 Unconditional Right of Holders to Receive Principal and Interest.**

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Security on the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

#### **SECTION 6.9 Restoration of Rights and Remedies.**

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

#### **SECTION 6.10 Rights and Remedies Cumulative.**

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.8, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

### **SECTION 6.11 Delay or Omission Not Waiver.**

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

### **SECTION 6.12 Control by Holders.**

The Holders of a majority in aggregate principal amount of the outstanding Securities of any Series 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, with respect to the Securities of such Series, provided that:

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (c) subject to the provisions of Section 7.1 and Section 7.2, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

### **SECTION 6.13 Waiver of Past Defaults.**

The Holders of not less than a majority in aggregate principal amount of the outstanding Securities of any Series may on behalf of the Holders of all the Securities of such Series waive any past Default hereunder with respect to such Series and its consequences, except (i) a continuing Default in the payment of the principal of or interest on any Security of such Series (provided, however, that the Holders of a majority in aggregate principal amount of the outstanding Securities of any Series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration), or (ii) a Default in respect of a covenant or provision hereof which cannot be modified or amended without the consent of the Holder of each outstanding Security of such Series affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

### **SECTION 6.14 Undertaking for Costs.**

All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable 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 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the outstanding Securities of any Series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date).

## ARTICLE VII

### TRUSTEE

#### SECTION 7.1 Duties of Trustee.

- (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.
- (b) Except during the continuance of an Event of Default:
  - (i) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others.
  - (ii) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officers' Certificates or Opinions of Counsel furnished to the Trustee and conforming to the requirements of this Indenture; however, in the case of any such Officers' Certificates or Opinions of Counsel which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such Officers' Certificates and Opinions of Counsel to determine whether or not they conform to the requirements of this Indenture.
- (c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:
  - (i) This paragraph does not limit the effect of paragraph (b) of this Section.
  - (ii) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.
  - (iii) The Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it with respect to Securities of any Series in good faith in accordance with the direction of the Holders of a majority in aggregate principal amount of the outstanding Securities of such Series 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 Securities of such Series.
- (d) Every provision of this Indenture that in any way relates to the Trustee is subject to this Section 7.1.
- (e) The Trustee may refuse to perform any duty or exercise any right or power at the request or direction of any Holder unless it receives indemnity satisfactory to it against any loss, liability or expense.
- (f) The Trustee shall not be liable for interest on or the investment of any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.
- (g) No provision of this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

## SECTION 7.2 Rights of Trustee.

Subject to the provisions of Section 7.1:

- (a) The Trustee may rely on and shall be protected in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.
- (b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.
- (c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care. No Depository shall be deemed an agent of the Trustee and the Trustee shall not be responsible for any act or omission by any Depository.
- (d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, provided that the Trustee's conduct does not constitute negligence or bad faith.
- (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 or direction of any of the Holders of Securities unless such Holders shall have offered to the Trustee satisfactory security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.
- (f) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.
- (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, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.
- (h) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities generally or the Securities of a particular Series and this Indenture.
- (i) In no event shall the Trustee be liable under or in connection with this Indenture for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Trustee has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.
- (j) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations under this Indenture because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like which restrict or prohibit the providing of the services contemplated by this Indenture, inability to obtain material, equipment, or communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank, and other causes beyond its control whether or not of the same class or kind as specifically named above.

- (k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, each Agent and to each agent, custodian and other person employed to act hereunder.
- (l) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.
- (m) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

### **SECTION 7.3 Individual Rights of Trustee.**

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an Affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee is also subject to Sections 7.10 and 7.11.

### **SECTION 7.4 Trustee's Disclaimer.**

The Trustee makes no representation as to the validity or adequacy of any offering materials, this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities other than its authentication.

### **SECTION 7.5 Notice of Defaults.**

If a Default or Event of Default occurs and is continuing with respect to the Securities of any Series and if the Trustee is deemed to have knowledge in accordance with Section 7.2 (h), the Trustee shall give to each Securityholder of the Securities of that Series notice in accordance with Section 10.2 of a Default or Event of Default within 90 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default. Except in the case of a Default or Event of Default in payment of principal of or interest on any Security of any Series, the Trustee may withhold the notice if and so long as its corporate trust committee or a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of Securityholders of that Series.

### **SECTION 7.6 Reports by Trustee to Holders.**

Within 60 days after May 15 in each year, beginning with May 15, 2018, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear on the register kept by the Registrar and, if any Bearer Securities are outstanding, publish in an Authorized Newspaper, a brief report dated as of such May 15, in accordance with, and to the extent required under, TIA Section 313.

A copy of each report at the time of its mailing to Securityholders of any Series shall be filed by the Company with the SEC and each stock exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee when Securities of any Series are listed on any stock exchange.

### **SECTION 7.7 Compensation and Indemnity.**

The Company shall pay to the Trustee from time to time compensation for its services as the Company and the Trustee shall from time to time agree upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel.

The Company agrees to indemnify and hold harmless the Trustee and each of its affiliates and their respective officers, directors, employees, representatives and agents (each, an “Indemnified Party”) from and against any and all claims, damages, losses, liabilities, costs and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party and arise in any way out of or in connection with or by reason of this Indenture or any of the transactions contemplated herein, including the enforcement of their rights under this Indenture, except to the extent such claim, damage, loss, liability, costs or expense resulted from such Indemnified Party’s own negligence or bad faith. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 7.7 applies, such indemnity shall be effective (i) whether or not such investigation, litigation or proceeding is brought by the Company, its directors, shareholders or creditors, or any Indemnified Party, (ii) whether or not any other person or an Indemnified Party is otherwise a party thereto and (iii) whether or not the transactions contemplated hereby are consummated.

If the indemnification provided for in the preceding paragraph is invalid or unenforceable in accordance with its terms, then the Company shall contribute to the amount paid or payable by the Trustee as a result of such liability in such proportion as is appropriate to reflect the relative benefits received by the Company on one hand and the Trustee on the other from the transactions relating to this Indenture.

The term “liability”, as used herein, shall mean any losses, claims, damages, expenses (including without limitation the Trustee’s reasonable and documented costs and expenses in defending itself against any losses, claims or investigations of any nature whatsoever or in bringing an action) or other liabilities, joint or several, arising out of or in connection with any claim, litigation, investigation or proceeding relating to this Indenture and any transactions contemplated thereby (including, without limitation, any claim, litigation, investigation or proceeding asserting violation of applicable laws).

The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

To secure the Company’s payment obligations in this Section, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee, except that held in trust to pay principal of and interest on particular Securities of that Series.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(e) or (f) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

The provisions of this Section shall survive the termination of this Indenture.

#### **SECTION 7.8 Replacement of Trustee.**

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee’s acceptance of appointment as provided in this Section.

The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company at least 30 days prior to the date of the proposed resignation. The Holders of a majority in aggregate principal amount of the Securities of any Series may remove the Trustee with respect to that Series by so notifying the Trustee and the Company. The Company may remove the Trustee with respect to Securities of one or more Series if:

- (a) the Trustee fails to comply with Section 7.10;



- (b) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (c) a Custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Securities of the applicable Series may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee with respect to the Securities of any one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least a majority in aggregate principal amount of the Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee subject to the lien provided for in Section 7.7, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee with respect to each Series of Securities for which it is acting as Trustee under this Indenture. A successor Trustee shall give a notice of its succession to each Securityholder of each such Series to the Holders in accordance with Section 10.2 and, if any Bearer Securities are outstanding, publish such notice on one occasion in an Authorized Newspaper. Notwithstanding replacement of the Trustee pursuant to this Section 7.8, the Company's obligations under Section 7.7 hereof shall continue for the benefit of the retiring Trustee with respect to expenses and liabilities incurred by it prior to such replacement.

#### **SECTION 7.9 Successor Trustee by Merger, Etc.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business (including its obligations under this Indenture) to, another corporation, the successor corporation without any further act shall be the successor Trustee.

#### **SECTION 7.10 Eligibility; Disqualification.**

This Indenture shall always have a Trustee who satisfies the requirements of TIA Section 310(a)(1), (2) and (5). The Trustee shall always have a combined capital and surplus of at least \$25,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA Section 310(b).

#### **SECTION 7.11 Preferential Collection of Claims Against Company.**

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

## ARTICLE VIII

### SATISFACTION AND DISCHARGE; DEFEASANCE

#### SECTION 8.1 Satisfaction and Discharge of Indenture.

This Indenture shall, upon Company Order, cease to be of further effect (except as hereinafter provided in this Section 8.1), and the Trustee, at the expense of the Company upon Company Request, shall execute instruments acknowledging satisfaction and discharge of this Indenture, when

- (a) either:
  - (i) all Securities theretofore authenticated and delivered (other than Securities that have been destroyed, lost or stolen and that have been replaced or paid) have been delivered to the Trustee for cancellation; or
  - (ii) all such Securities not theretofore delivered to the Trustee for cancellation (1) have become due and payable, or (2) will become due and payable at their Stated Maturity within one year, or (3) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company; and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust an amount sufficient for the purpose of paying and discharging the entire Indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Securities which have become due and payable on or prior to the date of such deposit) or to the Stated Maturity or redemption date, as the case may be;
- (b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and
- (c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company under Section 7.7, and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the provisions of Sections 2.4, 2.7, 2.8, 8.1, 8.2 and 8.5 shall survive.

#### SECTION 8.2 Application of Trust Funds; Indemnification.

- (a) Subject to the provisions of Section 8.5, all money deposited with the Trustee pursuant to Section 8.1, all money and U.S. Government Obligations deposited with the Trustee pursuant to Section 8.3 or 8.4 and all money received by the Trustee in respect of U.S. Government Obligations deposited with the Trustee pursuant to Section 8.3 or 8.4, shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (other than the Company acting as its own Paying Agent) as the Trustee may determine, to the persons entitled thereto, of the principal and interest for whose payment such money has been deposited with or received by the Trustee or to make mandatory sinking fund payments or analogous payments as contemplated by Sections 8.3 or 8.4.
- (b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations deposited pursuant to Sections 8.3 or 8.4 or the interest and principal received in respect of such obligations other than any payable by or on behalf of Holders.
- (c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any U.S. Government Obligations or money held by it as provided in Sections 8.3 or 8.4 which, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such U.S. Government Obligations or money were deposited or received. This provision shall not authorize the sale by the Trustee of any U.S. Government Obligations held under this Indenture.

### SECTION 8.3 Legal Defeasance of Securities of Any Series.

In addition to the discharge of this Indenture pursuant to Section 8.1, unless this Section 8.3 is otherwise specified, pursuant to Section 2.2.16, to be inapplicable to Securities of any Series, the Company shall be deemed to have paid and discharged the entire Indebtedness on all the outstanding Securities of any Series on the 91st day after the date of the deposit referred to in subparagraph (c)(i) hereof, and the provisions of this Indenture, as it relates to such outstanding Securities of such Series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, at the expense of the Company upon Company Request, execute instruments acknowledging the same), except as to:

- (a) the rights of Holders of Securities of such Series to receive, from the trust funds described in subparagraph (c)(1) hereof, (i) payment of the principal of and each installment of principal of and interest on the outstanding Securities of such Series on the Stated Maturity of such principal or installment of principal or interest, and (ii) the benefit of any mandatory sinking fund payments applicable to the Securities of such Series on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Securities of such Series;
- (b) the provisions of Sections 2.4, 2.7, 2.8, 7.7, 8.2, 8.3, and 8.5; and
- (c) the rights, powers, trust and immunities of the Trustee hereunder;

provided that, the following conditions shall have been satisfied:

- (i) the Company shall have deposited or caused to be irrevocably deposited subject to Section 8.2(c) with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of such Securities, cash in Dollars and/or U.S. Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, 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 and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of all the Securities of such Series on the dates such installments of interest or principal and such sinking fund payments are due;
- (ii) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;
- (iii) no Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;
- (iv) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

- (v) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company; and
- (vi) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance of the Securities of such Series contemplated by this Section have been complied with.

#### **SECTION 8.4 Covenant Defeasance.**

Unless this Section 8.4 is otherwise specified, pursuant to Section 2.2.16, to be inapplicable to Securities of any Series, on and after the 91st day after the date of the deposit referred to in subparagraph (a) hereof, the Company may omit to comply with respect to the Securities of any Series with any term, provision or condition set forth under Sections 4.2, 4.3(a), 4.4, 4.6, 5.1 and 5.2 as well as any additional covenants specified in a supplemental indenture for such Series of Securities or a Board Resolution and Officers' Certificate delivered pursuant to Section 2.2 (and the failure to comply with any such covenants shall not constitute a Default or Event of Default with respect to such Series under Section 6.1) and the occurrence of any event specified in a supplemental indenture for such Series of Securities or a Board Resolution and Officers' Certificate delivered pursuant to Section 2.2 and designated as an Event of Default relating to Sections 4.2, 4.3(a), 4.4, 4.6, 5.1, 5.2 and such other Section shall not constitute a Default or Event of Default hereunder, with respect to the Securities of such Series, provided that the following conditions shall have been satisfied:

- (a) With reference to this Section 8.4, the Company has deposited or caused to be irrevocably deposited subject to Section 8.2(c) with the Trustee as trust funds in trust for the purpose of making the following payments specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, cash in Dollars and/or U.S. Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of the Securities of such Series on the dates such installments of interest or principal and such sinking fund payments are due;
- (b) Such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;
- (c) No Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;
- (d) The Company shall have delivered to the Trustee an Opinion of Counsel to the effect that Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred; and

- (e) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the covenant defeasance of the Securities of such Series contemplated by this Section have been complied with.

**SECTION 8.5 Repayment to Company.**

The Trustee and the Paying Agent shall pay to the Company upon Company Request any money held by them for the payment of principal and interest that remains unclaimed for two years. After that, Securityholders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

**ARTICLE IX**

**AMENDMENTS AND WAIVERS**

**SECTION 9.1 Without Consent of Holders.**

The Company and the Trustee may amend or supplement this Indenture or the Securities of one or more Series without the consent of any Holders of such Securities:

- (a) to cure any ambiguity, defect or inconsistency;
- (b) to comply with Article V;
- (c) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (d) to make any change that does not adversely affect the rights of any Holders of such Securities in any material respect;
- (e) to provide for the issuance of and establish the form and terms and conditions of Securities of any Series as permitted by this Indenture;
- (f) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or
- (g) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA.

Provided that such amendment or supplement does not have a material and adverse effect on the rights, preferences or privileges of the Trustee and the Holders of such Securities.

**SECTION 9.2 With Consent of Holders.**

Subject to Section 9.3, the Company and the Trustee may enter into a supplemental indenture with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Securities of each Series affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series), for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Securityholders of each such Series. Except as provided in Section 6.13, the Holders of at least a majority in aggregate principal amount of the outstanding Securities of any Series by notice to the Trustee (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series) may waive compliance by the Company with any provision of this Indenture or the Securities with respect to such Series.

It shall not be necessary for the consent of the Holders of Securities under this Section 9.2 to approve the particular form of any proposed supplemental indenture or waiver, but it shall be sufficient if such consent approves the substance thereof. After a supplemental indenture or waiver under this section becomes effective, the Company shall give to the Holders of Securities affected thereby in accordance with Section 10.2, a notice briefly describing the supplemental indenture or waiver. Any failure by the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

### **SECTION 9.3 Limitations.**

Without the consent of each Securityholder affected, an amendment or waiver may not:

- (a) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (b) reduce the rate of or extend the time for payment of interest (including default interest) on any Security;
- (c) reduce the principal or change the Stated Maturity of any Security or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;
- (d) reduce the principal amount of Discount Securities payable upon acceleration of the maturity thereof;
- (e) waive a Default or Event of Default in the payment of the principal of or interest, if any, on any Security;
- (f) make the principal of or interest, if any, on any Security payable in any currency other than that stated in the Security;
- (g) make any change in Sections 6.8, 6.13, or 9.3; or
- (h) waive a redemption payment with respect to any Security.

### **SECTION 9.4 Compliance with Trust Indenture Act.**

Every amendment to this Indenture or the Securities of one or more Series shall be set forth in a supplemental indenture hereto that complies with the TIA as then in effect.

### **SECTION 9.5 Revocation and Effect of Consents.**

Until an amendment is set forth in a supplemental indenture or a waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the notice of revocation before the date of the supplemental indenture or the date the waiver becomes effective.

Any amendment or waiver, once effective, shall bind every Securityholder of each Series affected by such amendment or waiver unless it is of the type described in Section 9.3. In that case, the amendment or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

**SECTION 9.6 Notation on or Exchange of Securities.**

The Trustee may place an appropriate notation about an amendment or waiver on any Security of any Series thereafter authenticated. The Company in exchange for Securities of that Series may issue and the Trustee shall authenticate upon request new Securities of that Series that reflect the amendment or waiver.

**SECTION 9.7 Trustee Protected.**

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 7.1 and Section 7.2) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee shall sign all supplemental indentures, except that the Trustee need not sign any supplemental indenture that adversely affects its rights, duties, liabilities, protections, benefits, immunities or indemnities.

**ARTICLE X**

**MISCELLANEOUS**

**SECTION 10.1 Trust Indenture Act Controls.**

If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required or deemed to be included in this Indenture by the TIA, such required or deemed provision shall control.

**SECTION 10.2 Notices.**

Any notice, instruction, request, direction or communication by the Company or the Trustee to the other, or by a Holder to the Company or the Trustee, is duly given if in writing and delivered in person, mailed by first-class mail or by a nationally recognized overnight courier, or sent by facsimile e-mail of a PDF document:

if to the Company:

United Community Banks, Inc.  
2 West Washington Street  
Greenville, South Carolina 29601  
Attention: Jefferson Harralson  
Telephone: (706) 781-2265  
Facsimile: (706) 745-9046]

if to the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
1011 Centurion Parkway N.  
2<sup>nd</sup> Floor  
Jacksonville, Florida 32256  
Attention: Corporate Trust Administration  
Facsimile: (904) 645-1921

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

Any notice or communication to a Securityholder (i) of a non-Global Security shall be mailed by first-class mail to his address shown on the register kept by the Registrar and (ii) of a Global Security shall be given to the Depository therefor in accordance with its applicable procedures and, if any Bearer Securities are outstanding, published in an Authorized Newspaper. Failure to give a notice or communication to a Securityholder of any Series or any defect in it shall not affect its sufficiency with respect to other Securityholders of that or any other Series.

If a notice or communication is given in the manner provided above, within the time prescribed, it is duly given, whether or not the Securityholder receives it.

If the Company gives a notice or communication to Securityholders, it shall give a copy to the Trustee and each Agent at the same time.

The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Indenture and delivered using the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder (collectively, “Electronic Means”); provided, however, that the Company shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Company whenever a person is to be added or deleted from the listing. If the Company elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Company understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Company shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Company and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Company. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Company agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Company; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

#### **SECTION 10.3 Communication by Holders with Other Holders.**

Securityholders of any Series may communicate pursuant to TIA Section 312(b) with other Securityholders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or all Series. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

#### **SECTION 10.4 Certificate and Opinion as to Conditions Precedent.**

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officers’ Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and



- (b) an Opinion of Counsel stating that, in the opinion of such counsel, such action is authorized or permitted by this Indenture and all conditions precedent to taking such action have been complied with.

**SECTION 10.5 Statements Required in Certificate or Opinion.**

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) shall comply with the provisions of TIA Section 314(e) and shall include:

- (a) a statement that the person making such certificate or opinion has read such covenant or condition;
- (b) 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;
- (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

**SECTION 10.6 Rules by Trustee and Agents.**

The Trustee may make reasonable rules for action by or a meeting of Securityholders of one or more Series. Any Agent may make reasonable rules and set reasonable requirements for its functions.

**SECTION 10.7 Legal Holidays.**

Unless otherwise provided by Board Resolution and Officers' Certificate or supplemental indenture hereto for a particular Series, a "Legal Holiday" is any day that is not a Business Day. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

**SECTION 10.8 No Recourse Against Others.**

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

**SECTION 10.9 Counterparts.**

This Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**SECTION 10.10 Governing Laws.**

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

**SECTION 10.11 No Adverse Interpretation of Other Agreements.**

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**SECTION 10.12 Successors.**

All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

**SECTION 10.13 Severability.**

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

**SECTION 10.14 Table of Contents, Headings, Etc.**

The Table of Contents, Cross-Reference Table, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

**SECTION 10.15 Submission to Jurisdiction.**

The Company, the Trustee and each Holder of any Security (by such Holder's acceptance thereof) hereby irrevocably (i) submit to the non-exclusive jurisdiction of any New York State or Federal court sitting in New York City in the Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Indenture or the Securities, (ii) agree that all claims in respect of such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court, (iii) waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding, and (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Company hereby agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or substantially similar form of mail), postage prepaid to the Company at its address specified in Section 10.2 or at such other address of which the Trustee shall have been notified in writing pursuant thereto.

**SECTION 10.16 Waiver of Jury Trial.**

THE COMPANY, THE TRUSTEE AND EACH HOLDER OF ANY SECURITY BY SUCH HOLDER'S ACCEPTANCE THEREOF, HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

## **SECTION 10.17 Patriot Act.**

In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering (“Specified Law”), The Bank of New York Mellon Trust Company, N.A. is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with The Bank of New York Mellon Trust Company, N.A. Accordingly, the Company and, by its acceptance of a Security, each Holder, agrees to provide to The Bank of New York Mellon Trust Company, N.A. upon its request from time to time such identifying information and documentation as may be available for such party in order to enable The Bank of New York Mellon Trust Company, N.A. to comply with Specified Law.

## **ARTICLE XI**

### **SINKING FUNDS**

#### **SECTION 11.1 Applicability of Article.**

The provisions of this Article shall be applicable to any sinking fund for the retirement of the Securities of a Series, except as otherwise permitted or required by any form of Security of such Series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of the Securities of any Series is herein referred to as a “mandatory sinking fund payment” and any other amount provided for by the terms of Securities of such Series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Securities of any Series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 11.2. Each sinking fund payment shall be applied to the redemption of Securities of any Series as provided for by the terms of the Securities of such Series.

#### **SECTION 11.2 Satisfaction of Sinking Fund Payments with Securities.**

The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any Series to be made pursuant to the terms of such Securities (1) deliver outstanding Securities of such Series to which such sinking fund payment is applicable (other than any of such Securities previously called for mandatory sinking fund redemption) and (2) apply as credit Securities of such Series to which such sinking fund payment is applicable and which have been repurchased by the Company or redeemed either at the election of the Company pursuant to the terms of such Series of Securities (except pursuant to any mandatory sinking fund) or through the application of permitted optional sinking fund payments or other optional redemptions pursuant to the terms of such Securities, provided that such Securities have not been previously so credited. Such Securities shall be received by the Trustee, together with an Officers’ Certificate with respect thereto, not later than 15 days prior to the date on which the Securities are selected for redemption, and shall be credited for such purpose by the Trustee at the price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities in lieu of cash payments pursuant to this Section 11.2, the principal amount of Securities of such Series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Securities of such Series need not be called for redemption, except upon receipt of a Company Order that such action be taken, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall from time to time upon receipt of a Company Order pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that Series purchased by the Company having an unpaid principal amount equal to the cash payment required to be released to the Company.

#### **SECTION 11.3 Redemption of Securities for Sinking Fund.**

Not less than 45 days (unless otherwise indicated in the Board Resolution and Officers’ Certificate or supplemental indenture hereto in respect of a particular Series of Securities) prior to each sinking fund payment date for any Series of Securities, the Company will deliver to the Trustee an Officers’ Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that Series pursuant to the terms of that Series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that Series pursuant to Section 11.2, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days (unless otherwise indicated in the Board Resolution and Officers’ Certificate or supplemental indenture in respect of a particular Series of Securities) before each such sinking fund payment date, the Securities to be redeemed upon such sinking fund payment date shall be selected in the manner specified in Section 3.2 and the Trustee cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.3. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.4, 3.5 and 3.6.

## ARTICLE XII

### SUBORDINATION OF SECURITIES

#### SECTION 12.1 Agreement of Subordination.

The Company covenants and agrees, and each Holder of Securities of any Series issued hereunder by such Holder's acceptance thereof, likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article XII; and each person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

The payment of the principal of, premium, if any, and interest on all Securities (including, but not limited to, the redemption price with respect to the Securities called for redemption in accordance with Article III as provided in this Indenture) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article XII shall prevent the occurrence of any Default or Event of Default hereunder.

#### SECTION 12.2 Payments to Holders.

No payment shall be made with respect to the principal of, or premium, if any, or interest on the Securities (including, but not limited to, the redemption price with respect to the Securities to be called for redemption in accordance with Article III of this Indenture), except payments and distributions made by the Trustee as permitted by the first or second paragraph of Section 12.5, if:

- (a) a default in the payment of principal, premium, interest, rent or other obligations due on any Senior Indebtedness occurs and is continuing (or, in the case of Senior Indebtedness for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Senior Indebtedness), unless and until such default shall have been cured or waived or shall have ceased to exist; or
- (b) a default, other than a payment default, on a Designated Senior Indebtedness occurs and is continuing that then permits holders of such Designated Senior Indebtedness to accelerate its maturity and the Trustee receives a notice of the default (a "Payment Blockage Notice") from a Representative or the Company.

If the Trustee receives any Payment Blockage Notice pursuant to clause (b) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section unless and until (A) at least 365 days shall have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice, and (B) all scheduled payments of principal, premium, if any, and interest on the Securities that have come due have been paid in full in cash. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Payment Blockage Notice.

The Company may and shall resume payments on and distributions in respect of the Securities upon the earlier of:

- (1) the date upon which the default is cured or waived or ceases to exist, or
- (2) in the case of a default referred to in clause (b) above, 179 days pass after notice is received if the maturity of such Designated Senior Indebtedness has not been accelerated, unless this Article XII otherwise prohibits the payment or distribution at the time of such payment or distribution.

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 or to become due upon all Senior Indebtedness shall first be paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, or payment thereof in accordance with its terms provided for in cash or other payment satisfactory to the holders of such Senior Indebtedness, before any payment is made on account of the principal of, premium, if any, or interest on the Securities (except payments made pursuant to Article VI from monies deposited with the Trustee pursuant thereto prior to commencement of proceedings for such dissolution, winding-up, liquidation or reorganization); and upon any such dissolution or winding-up or liquidation or reorganization of the Company or bankruptcy, insolvency, receivership or other proceeding, 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 the Securities or the Trustee would be entitled, except for the provision of this Article XII, shall (except as aforesaid) 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 Securities or by the Trustee on behalf of the Holders of the Securities under this Indenture if received by them or it, directly to the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, or as otherwise required by law or a court order) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Indebtedness in full, in cash or other payment satisfactory to the holders of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness, before any payment or distribution or provision therefor is made to the Holders of the Securities or to the Trustee on behalf of the Holders of the Securities.

For purposes of this Article XII, 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 XII with respect to the Securities to the payment of all Senior Indebtedness which may at the time be outstanding; provided that (i) the Senior Indebtedness is assumed by the new corporation, if any, resulting from any reorganization or readjustment, and (ii) the rights of the holders of Senior Indebtedness (other than leases which are not assumed by the Company or the new corporation, as the case may be) 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 V shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 12.2 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article V.

In the event of the acceleration of the Securities because of an Event of Default, no payment or distribution shall be made to the Trustee or any Holder of Securities in respect of the principal of, premium, if any, or interest on the Securities (including, but not limited to, the redemption price with respect to the Securities called for redemption in accordance with Article III as provided in this Indenture), except payments and distributions made by the Trustee as permitted by the first or second paragraph of Section 12.5, until all Senior Indebtedness has been paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Securities is accelerated because of an Event of Default, the Company shall promptly notify holders of Senior Indebtedness of the acceleration at the address set forth in the notice from the Representative (or successor Representative) to the Trustee as being the address to which the Trustee should send its notice pursuant to this Section 12.2, unless there are no payment obligations of the Company thereunder and all obligations thereunder to extend credit have been terminated or expired.

In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, or provision is made for such payment thereof in accordance with its terms in cash or other payment satisfactory to the holders of such Senior Indebtedness, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness.

Nothing in this Section 12.2 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 7.7. This Section 12.2 shall be subject to the further provisions of Section 12.5.

### **SECTION 12.3 Subrogation of Securities.**

Subject to the payment in full of all Senior Indebtedness, the rights of the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal, premium, if any, and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee on behalf of the Holders of the Securities would be entitled except for the provisions of this Article XII, and no payment over pursuant to the provisions of this Article XII, to or for the benefit of the holders of Senior Indebtedness by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Indebtedness, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Indebtedness; and no payments or distributions of cash, property or securities to or for the benefit of the Holders of the Securities pursuant to the subrogation provisions of this Article XII, which would otherwise have been paid to the holders of Senior Indebtedness shall be deemed to be a payment by the Company to or for the account of the Securities. It is understood that the provisions of this Article XII are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities shall: (i) impair, as between the Company and Holders of the Securities, the obligations of the Company, to make, or prevent the Company from making, at any time except as provided in Section 12.2, payments of principal of, or interest (including interest accruing subsequent to the commencement of any proceeding for the bankruptcy or reorganization of the Company under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect) on, the Securities, as and when the same shall become due and payable in accordance with the terms of the Securities; (ii) affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Indebtedness; (iii) except as otherwise expressly provided in the in this Indenture and the Securities with respect to the limitation on the rights of the Trustee and the Holders of Securities, to accelerate the maturity of the Notes and pursue remedies upon such an acceleration, prevent the Holder of any Securities or the Trustee from exercising all remedies otherwise permitted by applicable law upon default thereunder, subject to the rights, if any, under this Article XII of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of such remedy; or (iv) prevent the application by the Trustee or any Paying Agent of any moneys deposited with it hereunder to the payment of or on account of the principal of, or interest on, the Securities or prevent the receipt by the Trustee or any Paying Agent of such moneys, if, prior to the second Business Day prior to such deposit, the Trustee or such Paying Agent did not have written notice of any event prohibiting the making of such deposit by the Company.

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee, subject to the provisions of Section 7.1, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Article XII.

#### **SECTION 12.4 Authorization to Effect Subordination.**

Each Holder of a Security by Holder's acceptance thereof authorizes and directs the Trustee on the Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article XII and appoints the Trustee to act as the Holder's attorney-in-fact for any and all such purposes. If the Trustee does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 6.3 hereof at least 30 days before the expiration of the time to file such claim, the holders of any Senior Indebtedness or their representatives are hereby authorized to file an appropriate claim for and on behalf of the Holders of the Securities.

#### **SECTION 12.5 Notice to Trustee.**

The Company shall give prompt written notice in the form of an Officers' Certificate the Trustee and to any Paying Agent of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee or any Paying Agent in respect of the Securities pursuant to the provisions of this Article XII. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XII, unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a Representative or a holder or holders of Senior Indebtedness or from any trustee thereof; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 7.1 and Section 7.2, shall be entitled in all respects to assume that no such facts exist; provided that if on a date not fewer than two Business Days prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of, or premium, if any, or interest on any Security) the Trustee shall not have received, with respect to such monies, the notice provided for in this Section 12.5, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date.

Notwithstanding anything in this Article XII to the contrary, nothing shall prevent any payment by the Trustee to the Holders of monies deposited with it pursuant to Section 8.1, and any such payment shall not be subject to the provisions of Section 12.1 or 12.2.

The Trustee, subject to the provisions of Section 7.1 and Section 7.2, shall be entitled to rely on the delivery to it of a written notice by a Representative or a person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such notice has been given by a Representative or a holder of 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 Senior Indebtedness to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such person, the extent to which such person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such person under this Article XII, and if such evidence is not furnished the Trustee may defer any payment to such person pending judicial determination as to the right of such person to receive such payment.

**SECTION 12.6 Trustee’s Relation to Senior Indebtedness.**

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII 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 Section 7.11 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article XII, and no implied covenants or obligations with respect to the holders of 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 Senior Indebtedness and the Trustee shall not be liable to any holder of Senior Indebtedness if it shall pay over or deliver to Holders of Securities, the Company or any other person money or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article XII or otherwise.

**SECTION 12.7 No Impairment of Subordination.**

No right of any present or future holder of any Senior Indebtedness 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 which any such holder may have or otherwise be charged with.

**SECTION 12.8 Article Applicable to Paying Agents.**

If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term “Trustee” as used in this Article shall (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that the first paragraph of Section 12.5 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

**SECTION 12.9 Senior Indebtedness Entitled to Rely.**

The holders of Senior Indebtedness (including, without limitation, Designated Senior Indebtedness) shall have the right to rely upon this Article XII, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

[Signatures on Following Pages]



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

**UNITED COMMUNITY BANKS, INC., as Issuer**

By: /s/ Jefferson Harralson

Name: Jefferson L. Harralson

Its: Executive Vice President and Chief Financial Officer

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as  
Trustee, Registrar, Paying Agent and Service Agent**

By: /s/ Karen Yu

Name: Karen Yu

Its: Vice President

[Signature Page to Indenture]

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## FIRST SUPPLEMENTAL INDENTURE

FIRST SUPPLEMENTAL INDENTURE (this "*First Supplemental Indenture*"), dated as of January 18, 2018, between UNITED COMMUNITY BANKS, INC., a Georgia corporation (the "*Company*"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national association, as trustee (the "*Trustee*"), registrar, paying agent and service agent.

WHEREAS, the Company entered into to an Indenture dated as of January 18, 2018 (the "*Original Indenture*"), with the Trustee;

WHEREAS, the Original Indenture is incorporated herein by this reference and the Original Indenture, as supplemented by this First Supplemental Indenture, is herein called the "*Indenture*";

WHEREAS, the Original Indenture provides for the issuance from time to time of the Company's debentures, notes or other debt instruments (therein called the "*Securities*"), in an unlimited principal amount to be issued in one or more series as contemplated therein;

WHEREAS, pursuant to the terms of the Original Indenture, the Company desires by this First Supplemental Indenture to establish a new Series of Securities to be known as its 4.500% Fixed to Floating Rate Subordinated Notes due January 30, 2028 (the "*Subordinated Notes*");

WHEREAS, the Company has duly authorized the execution and delivery of this First Supplemental Indenture to establish the Subordinated Notes as a Series of Securities under the Original Indenture and to provide for, among other things, the issuance and form of the Subordinated Notes and the terms, provision, and conditions thereof; and

WHEREAS, the Company desires and has requested the Trustee to join with it in the execution and delivery of this First Supplemental Indenture, and all requirements necessary to make this First Supplemental Indenture a valid instrument, in accordance with its terms, and to make the Subordinated Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been satisfied;

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

**SECTION 1.1 Definitions.**

The following defined terms used herein shall, unless the context otherwise requires, have the meanings specified below. Capitalized terms used herein for which no definition is provided herein shall have the meanings set forth in the Original Indenture; provided, however, that, where a term is defined both in this First Supplemental Indenture and the Original Indenture, the meaning given to such term in this First Supplemental Indenture shall control for purposes of this First Supplemental Indenture (in respect of the Subordinated Notes but not any other Series of Securities) and the Original Indenture.

"*Additional Notes*" means any Subordinated Notes issued under this First Supplemental Indenture at any time after the date hereof, in addition to the Initial Notes, and having the same terms in all respects as the Subordinated Notes (except for the issue date, issue price and, if applicable, the initial interest payment date), which if issued, will be treated with the Initial Notes as single Series and single class of Securities with the Subordinated Notes for all purposes under the Indenture.

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**“Calculation Agent”** means a banking institution or trust company to be appointed by the Company to act as calculation agent with respect to the calculation of the alternate floating rate in the event the three-month LIBOR is discontinued or is no longer quoted on Reuters LIBOR 01.

**“Capital Stock”** means (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (iv) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing person.

**“Consolidated Assets”** means all assets owned directly by the Company or indirectly by the Company through any Subsidiary and reflected on the Company’s consolidated balance sheet prepared in accordance with GAAP.

**“Indebtedness”** means, with respect to any person, and without duplication, (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such person or to only a portion thereof) (other than any account payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services), (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such person with respect to letters of credit, bank guarantees or bankers’ acceptances, (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such person and all obligations and other liabilities (contingent or otherwise) under any lease or related document (including a purchase agreement) in connection with the lease of real property which provides that such person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the lessor and the obligations of such person under such lease or related document to purchase or to cause a third party to purchase such leased property, (d) all obligations of such person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement, (e) all direct or indirect guaranties or similar agreements by such person in respect of, and obligations or liabilities (contingent or otherwise) of such person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of indebtedness, obligations or liabilities of another person of the kind described in clauses (a) through (d), (f) any indebtedness or other obligations described in clauses (a) through (e) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such person and (g) any and all refinancings, replacements, deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f).

**“Initial Notes”** means the aggregate principal amount of \$100,000,000 of Subordinated Notes issued under this First Supplemental Indenture on the Issue Date.

**“interest determination date”** means the second London Banking Day immediately preceding the commencement of the applicable Interest Reset Period.

**“Interest Payment Dates”** means January 30 and July 30 of each year, commencing July 30, 2018 through but not including January 30, 2023, and January 30, April 30, July 30, and October 30 of each year thereafter.

**“Interest Reset Period”** means each quarterly period during the periods in which the interest rate on the Subordinated Notes is a floating rate equal to three-month LIBOR (provided, however, that in the event the current three-month LIBOR is less than zero, three-month LIBOR will be deemed to be zero, plus 212 basis points), commencing on and including an Interest Payment Date and ending on but excluding the next succeeding Interest Payment Date. The first Interest Reset Period shall commence on and include January 30, 2023.

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**“Issue Date”** means January 18, 2018, the date of the original issuance of the Initial Notes.

**“Junior Subordinated Debt”** means the Company’s Trust Preferred Securities Guarantees and the floating rate junior subordinated debentures due 2034, the variable rate subordinated debentures due 2038, the floating rate junior subordinated notes due 2038, the floating rate junior subordinated notes due 2036 and the floating rate junior subordinated deferrable interest debentures due 2036.

**“LIBOR”** means, (i) the rate for deposits in U.S. dollars for the three-month period which appears on Reuters LIBOR 01 (as defined below) at approximately 11:00 a.m., London time, on the applicable interest determination date. **“Reuters LIBOR 01”** means the display designated on page LIBOR 01 on the Reuters Service (or such other page as may replace the LIBOR 01 page on that service or any successor service for the purpose of displaying London interbank offered rates for U.S. dollar deposits of major banks) and (ii) with respect to an interest determination date on which no rate appears on Reuters LIBOR 01 as of approximately 11:00 a.m., London time, on such interest determination date, the Calculation Agent shall request the principal London offices of each of four major reference banks (which may include affiliates of the underwriters) in the London interbank market selected by the Company to provide the Calculation Agent with a quotation of the rate at which deposits of U.S. dollars having a three-month maturity, commencing on the second London Banking Day immediately following such interest determination date, are offered by it to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such interest determination date in a principal amount equal to an amount of not less than \$1,000,000 that is representative for a single transaction in such market at such time. If at least two such quotations are provided, LIBOR for such interest determination date will be the arithmetic mean of such quotations as calculated by the Calculation Agent. If fewer than two quotations are provided, LIBOR for such interest determination date will be the arithmetic mean of the rates quoted as of approximately 11:00 a.m., New York City time, on such interest determination date by three major banks (which may include affiliates of the underwriters) selected by the Company for loans in U.S. dollars to leading European banks having a three-month maturity commencing on the second London Banking Day immediately following such interest determination date and in a principal amount equal to an amount of not less than \$1,000,000 that is representative for a single transaction in such market at such time; provided, however, that if the banks selected as aforesaid by the Calculation Agent are not quoting such rates as mentioned in this sentence, LIBOR for such interest determination date will be LIBOR determined with respect to the immediately preceding interest determination date.

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

**“Material Subsidiary”** means United Community Bank and any successor thereof.

**“Maturity Date”** means January 30, 2028.

**“Record Date”** means, with respect to each January 30 Interest Payment Date, the close of business on the January 15 preceding such Interest Payment Date, with respect to each April 30 Interest Payment Date, the close of business on the April 15 preceding such Interest Payment Date, with respect to each July 30 Interest Payment Date, the close of business on the July 15 preceding such Interest Payment Date, and with respect to each October 30 Interest Payment Date, the close of business on the October 15 preceding such Interest Payment Date, in each case, whether or not such date is a Business Day.

**“Redemption Date”** means any date fixed for redemption pursuant to the Indenture and the Subordinated Notes.

**“Redemption Price”** means 100% of the principal amount of the Subordinated Notes being redeemed, plus accrued and unpaid interest to but excluding the Redemption Date.

**“Senior Indebtedness”** means the principal, premium, if any, interest, including any interest accruing after bankruptcy, and rent or termination payment on or other amounts due on the Company’s current or future Indebtedness, whether created, incurred, assumed, guaranteed or in effect guaranteed by the Company, including any deferrals, renewals, extensions, refundings, amendments, modifications or supplements to the above. However, Senior Indebtedness does not include: (i) Indebtedness that expressly provides that it shall not be senior in right of payment to the Subordinated Notes or expressly provides that it is on the same basis or junior to the Subordinated Notes; (ii) the Company’s Indebtedness to any of the Company’s majority-owned Subsidiaries; (iii) the Junior Subordinated Debt and (iv) the Subordinated Notes.

“**Subsidiary**” means, with respect to any person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such person, (ii) any partnership (a) the sole general partner or the managing general partner of which is such person or an entity described in clause (i) and related to such person or (b) the only general partners of which are such person or of one or more entities described in clause (i) and related to such person (or any combination thereof) and (iii) any limited liability company of which more than 50% of the total membership interests is at the time owned or controlled, directly or indirectly, by such person.

“**Trust Preferred Securities Guarantees**” means the guarantees issued by the Company in connection with the floating rate capital securities due 2034 issued by Southern Bancorp Capital Trust I, the variable rate capital securities due 2038 issued by United Community Statutory Trust III, the variable rate capital securities due 2036 issued by Tidelands Trust I, the floating rate capital securities due 2038 issued by Tidelands Trust II, the floating rate capital securities due 2036 issued by Four Oaks Statutory Trust and any guarantee now or hereafter entered into by the Company in respect of any preferred or preference stock that is by its terms subordinated to or on a parity with the Junior Subordinated Debt.

“**Voting Stock**” means outstanding shares of Capital Stock having voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power because of default in dividends or other default.

## **ARTICLE II THE SUBORDINATED NOTES**

### **SECTION 2.1 Designation and Issuance of Subordinated Notes.**

2.1.1 There is hereby created a Series of Securities designated, as previously recited, as the Company’s “4.500% Fixed to Floating Rate Subordinated Notes due January 30, 2028.” In accordance with Section 2.3 of the Original Indenture, the Trustee will, upon receipt of an Officers’ Certificate and an Opinion of Counsel, in each case complying with Sections 10.4 and 9.7 of the Original Indenture, and a Company Order directing the Trustee to authenticate the Initial Notes, authenticate the Initial Notes.

2.1.2 The aggregate principal amount of Subordinated Notes which may be authenticated and delivered under this First Supplemental Indenture is unlimited. The aggregate principal amount of Initial Notes which may be authenticated and delivered under this First Supplemental Indenture on the Issue Date is \$100,000,000 (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Subordinated Notes pursuant to Sections 2.7, 2.8, 2.11, 3.6 or 9.6 of the Original Indenture), and the Subordinated Notes shall be denominated and payable in United States Dollars. The Subordinated Notes will be issuable and may be transferred only in denominations of \$1,000 or any amount in excess thereof that is an integral multiple of \$1,000. The Initial Notes will be issued at a price to the public of 100% of the principal amount thereof.

2.1.3 The Subordinated Notes constitute unsecured, subordinated obligations of the Company, and will be subordinated in right of payment to the prior payment in full of all of the Company’s Senior Indebtedness. The Subordinated Notes also are effectively subordinated to all debt and other liabilities, including trade payables and lease obligations, if any, of the Company’s Subsidiaries.

### **SECTION 2.2 Form and Terms of Subordinated Notes.**

2.2.1 The principal amount of the Subordinated Notes outstanding (together with any accrued unpaid interest and other amounts) shall be payable in accordance with the terms and conditions set forth in the Indenture and the Subordinated Notes on any Redemption Date and on the Maturity Date.

2.2.2 Interest on the Subordinated Notes shall be payable semi-annually in arrears on each January 30 and July 30 up to but not including January 30, 2023, with interest accruing from and including January 18, 2018 to but excluding January 30, 2023, at an initial rate of 4.500% per year, and interest shall be payable quarterly in arrears thereafter on January 30, April 30, July 30 and October 30, of each year through the Maturity Date or early Redemption Date, with such interest accruing from and including January 30, 2023, at a floating rate per annum equal to the then-current three-month LIBOR (provided, however, that in the event the current three-month LIBOR is less than zero, three-month LIBOR will be deemed to be zero, plus 212 basis points) to the person in whose name the Subordinated Notes (or one or more predecessor Subordinated Notes) are registered at the close of business on the Record Date for such Interest Payment Date. Payments of interest on the Subordinated Notes will include interest accrued to but excluding the respective Interest Payment Dates. The floating rate for each Interest Reset Period shall be calculated by the Company on the relevant interest determination date and notified to the Trustee on the Interest Payment Date occurring during such Interest Reset Period; provided, however, that, in the event the three-month LIBOR is discontinued or is no longer quoted on Reuters LIBOR 01, the Company shall appoint a Calculation Agent to calculate the alternate floating rate. In the event the Company appoints a Calculation Agent, the Calculation Agent shall calculate the floating rate for each Interest Reset Period and notify the Company and the Trustee of such rate on the Interest Payment Date occurring during such Interest Reset Period. Interest payments for the Subordinated Notes during the fixed period shall be computed and paid on the basis of a 360-day year of twelve 30-day months and interest during the floating period shall be calculated based upon the actual number of days during the period divided by 360 days. In the event that any Interest Payment Date during the fixed rate period is not a Business Day, then a payment of the interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date the scheduled Interest Payment Date. In the event that an Interest Payment Date occurring during the floating rate period is not a Business Day, the Company will pay interest on the next day that is a Business Day, unless it would thereby fall in the next succeeding calendar month, in which case such Interest Payment Date will be brought forward to the immediately preceding Business Day, and no interest will accrue or fail to accrue as a result of that postponement or earlier payment.

2.2.3 The place of payment where the Subordinated Notes may be presented or surrendered for payment, where the Subordinated Notes may be surrendered for registration of transfer or exchange (to the extent required or permitted, as applicable, by the terms of the Subordinated Notes) and where notices and demand to or upon the Trustee in respect of the Subordinated Notes and the Indenture may be served shall be the office of the Paying Agent from time to time, which shall initially be The Bank of New York Mellon Trust Company, N.A., c/o The Bank of New York Mellon, 111 Sanders Creek Parkway, East Syracuse, New York 13057.

2.2.4 The Subordinated Notes shall be issuable in whole or in part in the form of one or more registered Global Securities, substantially in the form set forth in Exhibit A hereto, registered in the name of the Depository or its nominee. The Company has initially appointed The Depository Trust Company, New York, New York, to act as Depository with respect to such Global Securities. Except under the limited circumstances described below, Subordinated Notes represented by the Global Security will not be exchangeable for, and will not otherwise be issuable as, Subordinated Notes in definitive form. The Global Securities described above may not be transferred except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.

Owners of beneficial interests in such a Global Security will not be considered the Holders thereof for any purpose under the Indenture, and no Global Security representing a Subordinated Note shall be exchangeable, except for another Global Security of like denomination and tenor to be registered in the name of the Depository or its nominee or to a successor Depository or its nominee. The rights of Holders of such Global Security shall be exercised only through the Depository.

A Global Security shall be exchangeable for Subordinated Notes registered in the names of persons other than the Depository or its nominee only if (i) the Depository notifies the Company that it is unwilling or unable to continue as a Depository for such Global Security and no successor Depository shall have been appointed by the Company, or if at any time the Depository ceases to be a clearing agency registered under the Exchange Act, at a time when the Depository is required to be so registered to act as such Depository and no successor Depository shall have been appointed by the Company, in each case within 90 calendar days after the Company receives such notice or becomes aware of such cessation, (ii) the Company in its sole discretion determines that such Global Security shall be so exchangeable, or (iii) there shall have occurred an Event of Default with respect to the Subordinated Notes. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Subordinated Notes registered in such names as the Depository shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

2.2.5 The Subordinated Notes are not convertible into Securities of any other Series.

2.2.6 All of the Events of Default set forth in clauses (a), (b), (d), (e), (f) and (g) of Section 6.1 of the Original Indenture will apply and clauses (c) and (h) of such Section will not apply with respect to the Subordinated Notes. Notwithstanding the foregoing, upon the occurrence of an Event of Default with respect to the Subordinated Notes (other than an Event of Default referred to in Section 6.1(e) or (f) of the Original Indenture), then, notwithstanding Section 6.2 of the Original Indenture, neither the Trustee nor the Holders of the Subordinated Notes may declare such principal amount and accrued but unpaid interest due and payable immediately; however, provided that, upon the occurrence of an Event of Default set forth in clauses (a), (b), (d), (e), (f) and (g) of Section 6.1 of the Original Indenture, the Trustee may, subject to 6.7 of the Original Indenture, seek to enforce its rights and the rights of the Holders of the Subordinated Notes to all overdue installments of interest and the payment of principal at the Maturity Date, as well as the performance any covenant or agreement under the Indenture.

If an Event of Default specified in Section 6.1(e) or (f) of the Original Indenture shall occur, the principal amount (or specified amount) of and accrued and unpaid interest, if any, on all outstanding Subordinated Notes shall *ipso facto* become and be immediately due and payable without any acceleration or other act on the part of the Trustee or any Holder.

2.2.7 So long as any of the Subordinated Notes are outstanding but subject to the provisions of Article V of the Original Indenture, the Company covenants that it:

(a) will not, nor will it permit the Material Subsidiary to, directly or indirectly, sell or otherwise dispose of any shares of, securities convertible into, or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of the Material Subsidiary, nor will the Company permit the Material Subsidiary to issue any shares of, or securities convertible into, or options, warrants or rights to subscribe for or purchase shares of, Voting Stock of the Material Subsidiary if, in each case, after giving effect to any such transaction and to the issuance of the maximum number of shares of Voting Stock of the Material Subsidiary issuable upon the exercise of all such convertible securities, options, warrants or rights, the Company would cease to own, directly or indirectly, at least 80% of the issued and outstanding Voting Stock of the Material Subsidiary; and

(b) will not permit the Material Subsidiary to:

(i) merge or consolidate with or into any corporation or other person, unless the Company is the surviving corporation or person, or unless, upon consummation of the merger or consolidation, the Company will own, directly or indirectly, at least 80% of the surviving corporation's issued and outstanding Voting Stock; or

(ii) lease, sell, assign or transfer all or substantially all of its properties and assets to any person (other than the Company), unless, upon such sale, assignment or transfer, the Company will own, directly or indirectly, at least 80% of the issued and outstanding Voting Stock of that person.

Notwithstanding the foregoing, any such sale, assignment or transfer of securities, any such merger or consolidation or any such lease, sale, assignment or transfer of properties and assets shall not be prohibited if: (A) required by law, such lease, sale, assignment or transfer of securities is made to any person for the purpose of the qualification of such person to serve as a director; (B) such lease, sale, assignment or transfer of securities is made by the Company or any of its Subsidiaries acting in a fiduciary capacity for any person other than the Company or any Subsidiary; (C) made in connection with the consolidation of the Company with or the sale, lease or conveyance of all or substantially all of the assets of the Company to, or merger of the Company with or into any other person (as to which Article V of the Original Indenture shall apply); (D) required by any law or any rule, regulation or order of any governmental agency or authority; or (E) required as a condition imposed by any law or any rule, regulation or order of any governmental agency or authority to the acquisition by the Company, directly or indirectly, through purchase of stock or assets, merger, consolidation or otherwise, of any person; provided, that, in the case of (E) only, after giving effect to such disposition and acquisition, (y) at least 80% of the issued and outstanding Voting Stock of such person will be owned, directly or indirectly, by the Company and (z) the Consolidated Assets of the Company will be at least equal to 70% of the Consolidated Assets of the Company prior thereto; and nothing in this section shall prohibit the Company or the Material Subsidiary from the sale or transfer of assets pursuant to any securitization transaction or the pledge of any assets to secure borrowings incurred in the ordinary course of business, including, without limitation, deposit liabilities, mortgage escrow funds, reverse repurchase agreements, Federal Home Loan Bank advances, recourse obligations incurred in connection with the Material Subsidiary's lending activities and letters of credit.

### **SECTION 2.3 Registrar, Paying Agent and Service Agent.**

The Company initially appoints the Trustee to act as Registrar, Paying Agent and Service Agent with respect to the Subordinated Notes, and the Trustee hereby agrees so to initially act. The Company may change any Paying Agent, Registrar or Service Agent without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

### **SECTION 2.4 Redemption of Subordinated Notes.**

The Subordinated Notes shall be redeemable at the Company's option prior to the stated maturity pursuant to this Section 2.4 and in accordance with Article III of the Original Indenture. A notice of redemption of the Subordinated Notes may not be conditional.

(a) The Subordinated Notes shall be redeemable, in whole or in part, at the option of the Company on any Interest Payment Date on or after January 30, 2023, at the Redemption Price, and in accordance with the provisions set forth in the Indenture and Subordinated Notes.

(b) The Subordinated Notes may not be otherwise redeemed prior to January 30, 2023, except that the Company may, at its option, redeem the Subordinated Notes at any time in whole but not in part, at the Redemption Price upon the occurrence of:

(i) a "Tax Event," which means the receipt by the Company of an opinion of independent tax counsel to the effect that as a result of (1) an amendment to or change (including any announced prospective amendment or change) in any law or treaty, or any regulation thereunder, of the United States or any of its political subdivisions or taxing authorities; (2) a judicial decision, administrative action, official administrative pronouncement, ruling, regulatory procedure, regulation, notice or announcement, including any notice or announcement of intent to adopt or promulgate any ruling, regulatory procedure or regulation (any of the foregoing, an "administrative or judicial action"); (3) an amendment to or change in any official position with respect to, or any interpretation of, an administrative or judicial action or a law or regulation of the United States that differs from the previously generally accepted position or interpretation; or (4) a threatened challenge asserted in writing in connection with an audit of the Company's federal income tax returns or positions or a similar audit of any of the Company's Subsidiaries, or a publicly known threatened challenge asserted in writing against any other taxpayer that has raised capital through the issuance of securities that are substantially similar to the Subordinated Notes, in each case, occurring or becoming publicly known on or after the original issue date of the Subordinated Notes, there is more than an insubstantial risk that interest payable by the Company on the Subordinated Notes is not, or, within 90 days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes;



(ii) a “Tier 2 Capital Event,” which means the receipt by the Company of an opinion of independent bank regulatory counsel to the effect that as a result of: (1) any amendment to, or change in, the laws, rules or regulations of the United States (including, for the avoidance of doubt, any agency or instrumentality of the United States, including the FRB and other appropriate federal bank regulatory agencies) that is enacted or becomes effective after the initial issuance of the Subordinated Notes; (2) any proposed change in those laws, rules or regulations that is announced or becomes effective after the initial issuance of the Subordinated Notes; or (3) any official administrative decision or judicial decision or administrative action or other official pronouncement interpreting or applying those laws, rules or regulations or policies with respect thereto that is announced after the initial issuance of the Subordinated Notes, in each case, there is more than an insubstantial risk that the Company will not be entitled to treat the Subordinated Notes then outstanding as “Tier 2 Capital” (or its equivalent) for purposes of the capital adequacy rules of the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) (or, as and if applicable, the capital adequacy rules or regulations of any successor appropriate federal banking agency) as then in effect and applicable, for so long as any Subordinated Note is outstanding; or

(iii) a “1940 Act Event,” which means the Company becoming required to register as an investment company pursuant to the Investment Company Act of 1940, as amended.

No such redemption of the Subordinated Notes by the Company prior to January 30, 2023, shall be made without the prior approval of the Federal Reserve Board if such prior approval is or will be required at the Redemption Date which is prior to January 30, 2023, in order for the Subordinated Notes to qualify as Tier 2 capital of the Company under the rules and guidelines of the Federal Reserve Board.

Prior to giving any notice to the Holders of the Company’s election to redeem the Subordinated Notes as described above, the Company must deliver to the Trustee an Opinion of Counsel and an Officers’ Certificate certifying that (i) a Tax Event, a Tier 2 Capital Event or a 1940 Act Event has occurred and (ii) the Company is entitled to redeem the Subordinated Notes in accordance with this Section 2.4(b), upon which such Opinion of Counsel and Officers’ Certificate the Trustee may conclusively rely.

### **SECTION 2.5 Issuances of Additional Notes.**

The Company may, from time to time, and without notice to or consent of Holders of the Subordinated Notes, issue Additional Notes. The Initial Notes issued on the Issue Date, and any Additional Notes issued shall be treated as a single Series and single class of Securities for all purposes under the Indenture.

At any time after the execution of this First Supplemental Indenture, the Company may deliver Additional Notes to the Trustee for authentication, together with an Officers’ Certificate complying with Section 10.4 of the Original Indenture and a Company Order for the authentication and delivery of such Additional Notes, as well as an Opinion of Counsel complying with Section 10.4 of the Original Indenture. Subject to Section 2.3 of the Original Indenture, the Trustee shall thereafter authenticate and deliver such Additional Notes in accordance with such Officers’ Certificate and Company Order. In authenticating such Additional Notes and accepting the additional responsibilities under this First Supplemental Indenture in relation to such Additional Notes, the Trustee shall be entitled to receive and fully protected in relying upon such Officers’ Certificate, which such Officers’ Certificate shall set forth any limit upon the aggregate principal amount of such Additional Notes to be authenticated and delivered under this First Supplemental Indenture and setting forth the issue price, the issue date and the CUSIP number of such Additional Notes and be prepared in accordance with Section 10.4 of the Original Indenture.

## **ARTICLE THREE SINKING FUND**

### **SECTION 3.1 No Sinking Fund.**

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

**ARTICLE FOUR  
MISCELLANEOUS PROVISIONS**

**SECTION 4.1 Ratification.**

The Original Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed. This First Supplemental Indenture shall be deemed part of the Original Indenture in the manner and to the extent provided herein and therein and every Holder of Subordinated Notes authenticated and delivered under this First Supplemental Indenture shall be bound hereby and thereby. Notwithstanding any other provision of the Original Indenture or this First Supplemental Indenture to the contrary, the provisions of this First Supplemental Indenture shall apply solely with respect to the Subordinated Notes and, with respect to the Subordinated Notes, to the extent any provisions of this First Supplemental Indenture or the Subordinated Notes issued hereunder shall conflict with any provision of the Original Indenture, the provisions of this First Supplemental Indenture or the Subordinated Notes, as applicable, shall govern.

**SECTION 4.2 Counterparts.**

This First Supplemental Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**SECTION 4.3 Governing Laws.**

This First Supplemental Indenture and the Subordinated Notes shall be governed by the laws of the State of New York applicable to agreements made and to be performed in such State, without regard to the conflict of laws provisions thereof.

**SECTION 4.4 Successors.**

All agreements of the Company in this First Supplemental Indenture and the Subordinated Notes shall bind its successor. All agreements of the Trustee in this First Supplemental Indenture shall bind its successor.

**SECTION 4.5 Severability.**

In case any provision in this First Supplemental Indenture or in the Subordinated Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 4.6 Conflict with Trust Indenture Act.**

If any provision of this First Supplemental Indenture limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in this First Supplemental Indenture by, or is otherwise governed by, any of the provisions of the Trust Indenture Act of 1934 (the "TIA"), such other provision shall control; and if any provision hereof otherwise conflicts with the TIA, the TIA shall control unless otherwise provided as contemplated by Section 10.1 of the Original Indenture with respect to this Series of Subordinated Notes.

**SECTION 4.7 No Additional Rights.**

Nothing in this First Supplemental Indenture is intended to or shall provide any rights to any parties other than those expressly contemplated by this First Supplemental Indenture.

**SECTION 4.8 Effective Date.**

This First Supplemental Indenture shall become effective upon the execution and delivery by the parties hereto.

**SECTION 4.9 No Liability of the Trustee; Rights, Protections, Immunities and Indemnities of the Trustee.**

The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this First Supplemental Indenture or the Subordinated Notes (other than with respect to the certificate of authentication) or for or in respect of the recitals contained herein, all of which are made solely by the Company.

All of the rights, protections, benefits, immunities and indemnities afforded or given to the Trustee pursuant to the Original Indenture shall apply to and be enforceable by the Trustee acting in its capacity as Trustee for the Subordinated Notes and pursuant to this First Supplemental Indenture *mutatis mutandi* as if set forth and incorporated herein. The Trustee is acting hereunder, not in its individual capacity, but solely in its capacity as Trustee for the Subordinated Notes under the Indenture.

**IN WITNESS WHEREOF**, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the day and year first above written.

**UNITED COMMUNITY BANKS, INC.**

By: /s/ Jefferson Harralson

Name: Jefferson L. Harralson

Title: Executive Vice President and Chief Financial Officer

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as  
Trustee, Registrar, Paying Agent, and Service Agent**

By: /s/ Karen Yu

Name: Karen Yu

Title: Vice President

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**EXHIBIT A**

**(see attached)**

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FORM OF GLOBAL SECURITY

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE OF DTC, BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITORY OR A NOMINEE OF SUCH A SUCCESSOR DEPOSITORY.

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

NEITHER THE HOLDERS NOR THE BENEFICIAL OWNERS OF THIS SECURITY SHALL BE ENTITLED TO PAYMENTS OF PRINCIPAL OR INTEREST EXCEPT PURSUANT TO THE PROVISIONS HEREOF.

THE SECURITY DOES NOT EVIDENCE SAVINGS ACCOUNTS OR DEPOSITS AND IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

**UNITED COMMUNITY BANKS, INC.**

**4.500% Fixed to Floating Rate Subordinated Notes Due January 30, 2028**

CUSIP \_\_\_\_\_

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNITED COMMUNITY BANKS, INC. (which includes any successor under the within-mentioned Indenture) promises to pay to Cede & Co. or registered assigns, the principal sum of \_\_\_\_\_, on January 30, 2028.

Interest Payment Dates: January 30 and July 30 of each year, commencing July 30, 2018 ,through but not including January 30, 2023, and January 30, April 30, July 30, and October 30 of each year thereafter.

Record Dates: January 15, April 15, July 15, and October 15.

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**UNITED COMMUNITY BANKS, INC.**

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

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Securities of the Series designated therein referred to in the within-mentioned Indenture:

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

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

Dated: January 18, 2018

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(Reverse of Note)

**UNITED COMMUNITY BANKS, INC.**

**4.500% Fixed to Floating Rate Subordinated Notes Due January 30, 2028**

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. **Interest.** This Subordinated Note is one of the duly authorized issue of Securities of United Community Banks, Inc. (the “Company”), a Georgia corporation, of a Series designated as the “4.500% Fixed to Floating Rate Subordinated Notes due January 30, 2028” (herein called the “Subordinated Notes”) initially issued in an aggregate principal amount of \$100,000,000. The Company promises to pay interest on the principal amount of this Subordinated Note semi-annually in arrears on each January 30 and July 30 up to but not including January 30, 2023, with interest accruing from and including January 18, 2018 to but excluding January 30, 2023, at an initial rate of 4.500% per year, and interest shall be payable quarterly in arrears thereafter on January 30, April 30, July 30 and October 30, of each year through the Maturity Date or early Redemption Date, with such interest accruing from and including January 30, 2023, at a floating rate per annum equal to the then-current three-month LIBOR (provided, however, that in the event the current three-month LIBOR is less than zero, three-month LIBOR will be deemed to be zero, plus 212 basis points). Interest payments for this Subordinated Note during the fixed period shall be computed and paid on the basis of a 360-day year of twelve 30-day months and interest during the floating period shall be calculated based upon the actual number of days during the period divided by 360 days. In the event that any date on which interest is payable on this Subordinated Note during the fixed rate period is not a Business Day, then a payment of the interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the date the payment was originally payable. In the event that an Interest Payment Date occurring during the floating rate period is not a Business Day, the Company will pay interest on the next day that is a Business Day, unless it would thereby fall in the next succeeding calendar month, in which case such Interest Payment Date will be brought forward to the immediately preceding Business Day, and no interest will accrue or fail to accrue as a result of that postponement or earlier payment.

2. **Method of Payment.** The Company will pay interest on this Subordinated Note to the persons who are registered Holders of this Subordinated Note at the close of business on the Record Date for such Interest Payment Date, even if such Subordinated Note is canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.13 of the Original Indenture (as herein defined) with respect to defaulted interest. The Subordinated Note will be payable as to principal, premium, if any, and interest at the office or agency of the Paying Agent appointed from time to time by the Company, whose address is initially The Bank of New York Mellon Trust Company, N.A., c/o The Bank of New York Mellon, 111 Sanders Creek Parkway, East Syracuse, New York 13057. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

3. **Paying Agent, Registrar and Service Agent.** Initially, The Bank of New York Mellon Trust Company, N.A., the trustee (“Trustee”) under the Indenture, will act as Paying Agent, Registrar and Service Agent. The Company may change any Paying Agent, Registrar or Service Agent without notice to any Holder. The Company or any of its Subsidiaries may act in any such capacity.

4. **Indenture.** The Company and the Trustee entered into an Indenture dated as of January 18, 2018 (the “Original Indenture”) and a First Supplemental Indenture dated as of January 18, 2018 (the “First Supplemental Indenture” and together with the Original Indenture, the “Indenture”) setting forth certain terms of the Subordinated Notes. The terms of the Subordinated Notes include those stated in the Indenture and those made part of the Indenture by reference to the TIA. The Subordinated Notes are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of such terms. To the extent any provision of this Subordinated Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Subordinated Notes are unsecured obligations of the Company.

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5. Denominations, Transfer, Exchange. The Subordinated Notes are in registered form without coupons in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. The transfer of Subordinated Notes may be registered and Subordinated Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Subordinated Notes during the period between a record date and the next succeeding Interest Payment Date.

6. Persons Deemed Owners. The registered Holder of a Subordinated Note may be treated as its owner for all purposes.

7. Amendment, Supplement and Waiver. Subject to certain exceptions and the applicable provisions of the Indenture, the Indenture or the Subordinated Notes may be amended or supplemented with the written consent of the Holders of at least a majority in principal amount of the then outstanding Subordinated Notes (including, without limitation, consents obtained in connection with a tender offer or exchange offer for the Subordinated Notes), for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the Holders of the Subordinated Notes. Subject to applicable provisions of the Indenture, Holders of a majority in principal amount of the then outstanding Subordinated Notes by notice to the Trustee (including consents obtained in connection with a tender offer or exchange offer for the Subordinated Notes) may waive compliance by the Company with any provision of the Indenture or the Subordinated Notes with respect to the Subordinated Notes. As provided in the Indenture, without the consent of any Holder of a Subordinated Note, the Indenture or the Subordinated Notes may be amended or supplemented to, among other things, cure any ambiguity, defect or inconsistency; provide for uncertificated Subordinated Notes in addition to or in place of certificated Subordinated Notes; or make any other change that does not adversely affect the rights of any Holder in any material respect.

8. Defaults and Remedies. If an Event of Default with respect to the Subordinated Notes occurs and is continuing, the principal and interest owed on the Subordinated Notes shall only become due and payable in accordance with the terms and conditions set forth in Article VI of the Original Indenture (as amended by Section 2.2.6 of the First Supplemental Indenture). Accordingly, the Holder of this Subordinated Note has no right to accelerate the maturity of this Subordinated Note in the event the Company fails to pay interest on any of the Subordinated Notes or fails to perform any other obligations under the Subordinated Notes or in the Indenture that are applicable to the Subordinated Notes.

9. Redemption. The Subordinated Notes of this Series shall be redeemable, in whole or in part, at the option of the Company, on any Interest Payment Date on or after January 30, 2023, at the Redemption Price. Notwithstanding the foregoing sentence, the Company may redeem the Subordinated Notes at any time, including before January 30, 2023, in whole but not in part, at the Redemption Price, upon the occurrence of a Tax Event, Tier 2 Capital Event or a 1940 Act Event. No such redemption of the Subordinated Notes by the Company prior to January 30, 2023, shall be made without the prior approval of the Board of Governors of the Federal Reserve System ("Federal Reserve Board") if such prior approval is or will be required at the Redemption Date which is prior to January 30, 2023, in order for the Subordinated Notes to qualify as Tier 2 capital of the Company under the rules and guidelines of the Federal Reserve Board.

10. Conversion. The Subordinated Notes are not convertible into or exchangeable for any of the equity securities, other securities or assets of the Company or any Subsidiary.

11. No Sinking Fund. There is no sinking fund provided for the Subordinated Notes.

12. Trustee Dealings with Company. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Subordinated Notes and may otherwise deal with the Company or any affiliate of the Company with the same rights it would have if it were not the Trustee.

13. Discharge and Defeasance. Subject to certain conditions, the Company at any time shall be entitled to terminate some or all of its obligations under the Subordinated Notes and the Indenture if the Company deposits with the Trustee cash in Dollars (as defined in the Indenture) and/or U.S. Government Obligations (as defined in the Indenture) in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, on and interest on the outstanding Subordinated Notes on the earliest Redemption Date on or after January 30, 2023.

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14. Subordination. The Indebtedness evidenced by this Subordinated Note is, to the extent provided in the Indenture, subordinate and junior in right of payment and upon liquidation to the prior payment in full of all Senior Indebtedness (as defined in the Indenture), and this Subordinated Note is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Subordinated Note, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided, and (c) appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

15. No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Subordinated Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder of the Subordinated Notes, by accepting the Subordinated Notes, waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Subordinated Notes.

16. Authentication. This Subordinated Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

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

18. CUSIP Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company may cause CUSIP numbers to be printed on the Subordinated Notes.

19. Available Information. The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

United Community Banks, Inc.  
2 West Washington Street  
Greenville, South Carolina 29601  
Attention: Jefferson Harralson

20. Governing Law. THIS SUBORDINATED NOTE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

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Assignment Form

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

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(Insert assignee's Social Security or Tax Identification number)

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

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

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

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

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

SIGNATURE GUARANTEE:

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Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

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Troutman Sanders LLP  
600 Peachtree Street NE, Suite 5200  
Atlanta, GA 30308-2216



troutman.com

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January 18, 2018

United Community Banks, Inc.  
125 Highway 515 East  
Blairsville, Georgia 30512

Ladies and Gentlemen:

In connection with the registration under the Securities Act of 1933, as amended (the "Act"), of \$100,000,000 principal amount of 4.500% Fixed to Floating Rate Subordinated Notes due January 30, 2028 (the Notes") of United Community Banks, Inc., a Georgia corporation (the "Company"), we, as your counsel, have examined such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion.

Upon the basis of such examination, we advise you that, in our opinion, assuming the Notes have been duly authorized, when the Notes have been duly executed and authenticated in accordance with the Indenture relating to the Notes and issued and sold as contemplated in the registration statement on Form S-3 (File No. 333-203548) filed by the Company under the Act, as it became effective under the Act, and including any amendment or supplemental prospectus thereto (the "Registration Statement"), the Notes will constitute valid and legally binding obligations of the Company, 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.

The foregoing opinion is limited to the federal laws of the United States and the laws of the States of Georgia and New York, and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

We have relied as to certain factual matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible, and we have assumed that the Indenture has been duly authorized, executed and delivered by the Trustee thereunder, an assumption which we have not independently verified.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the heading "Legal Matters" in the prospectus thereto. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

/s/ TROUTMAN SANDERS LLP

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