

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MAY 17, 2001

REGISTRATION NO. 333-

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 SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
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FORM S-3  
 REGISTRATION STATEMENT  
 UNDER  
 THE SECURITIES ACT OF 1933  
 -----

FIRST BUSEY CORPORATION FIRST BUSEY CAPITAL TRUST I  
 (Exact Name of Co-Registrants as Specified in Charters)

NEVADA  
 (State or other jurisdiction of  
 incorporation or organization)  
 37-1078406  
 (I.R.S. Employer Identification  
 Number)

DELAWARE  
 (State or other jurisdiction of  
 incorporation or organization)  
 51-6521934  
 (I.R.S. Employer Identification  
 Number)

201 WEST MAIN STREET  
 URBANA, ILLINOIS 61801  
 (217) 365-4556  
 (Address, Including Zip Code, and Telephone Number, Including Area Code, of  
 Co-Registrants' Principal Executive Offices)  
 -----

DOUGLAS C. MILLS  
 CHIEF EXECUTIVE OFFICER AND CHAIRMAN OF THE BOARD  
 FIRST BUSEY CORPORATION  
 201 WEST MAIN STREET  
 URBANA, ILLINOIS 61801  
 (217) 365-4556  
 (Name, Address, Including Zip Code, and Telephone Number, Including Area Code,  
 of Agent for Service for Co-Registrants)  
 -----

Copies to:

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 111 WEST MONROE STREET  
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 333 WEST WACKER DRIVE, SUITE 2700  
 CHICAGO, ILLINOIS 60606  
 (312) 984-3100

-----  
 APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: As soon as  
 practicable after the Registration Statement becomes effective.

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

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

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434,  
 please check the following box: [X]  
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CALCULATION OF REGISTRATION FEE

	AMOUNT TO BE REGISTERED(1)	PROPOSED MAXIMUM OFFERING PRICE TO BE REGISTERED PER UNIT	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE	AMOUNT OF REGISTRATION FEE(2)
% Cumulative Trust Preferred Securities of First Busey Capital Trust I.....	2,300,000 shares	\$10.00	\$23,000,000	\$5,750
% Subordinated Debentures of First Busey Corporation(3)(4).....	--	--	--	--
Guarantee of Preferred Securities(3)(5).....	--	--	--	--

- (1) Includes 300,000 shares which may be sold by First Busey Capital Trust I to cover over-allotments.
- (2) The registration fee is calculated in accordance with Rule 457(i) and (n).
- (3) This Registration Statement is deemed to cover the % subordinated debentures due 2031 of First Busey Corporation, the rights of holders of the debentures under the indenture, and the rights of holders of the preferred securities under the trust agreement, the guarantee and the expense agreement.
- (4) The % subordinated debentures due 2031 will be purchased by First Busey Capital Trust I with the proceeds of the sale of the preferred securities. The debentures may later be distributed for no additional consideration to the holders of the preferred securities of First Busey Capital Trust I upon its dissolution and the distribution of its assets.
- (5) No separate consideration will be received for the guarantee.

THE REGISTRANTS HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANTS SHALL FILE A FURTHER AMENDMENT THAT SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

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

SUBJECT TO COMPLETION, DATED MAY , 2001  
 2,000,000 PREFERRED SECURITIES  
 FIRST BUSEY CAPITAL TRUST I  
 % CUMULATIVE TRUST PREFERRED SECURITIES  
 LIQUIDATION AMOUNT \$10 PER PREFERRED SECURITY  
 FULLY, IRREVOCABLY AND UNCONDITIONALLY GUARANTEED,  
 ON A SUBORDINATED BASIS, AS DESCRIBED IN THIS PROSPECTUS, BY

FIRST BUSEY CORPORATION LOGO

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First Busey Capital Trust I is offering 2,000,000 preferred securities at \$10 per preferred security. The preferred securities represent an indirect interest in our % subordinated debentures. The debentures have the same payment terms as the preferred securities and will be purchased by First Busey Capital Trust using the proceeds from its offering of the preferred securities.

We have applied to designate the preferred securities for inclusion on The Nasdaq National Market under the symbol "BUSEP." We expect trading to commence on or prior to delivery of the preferred securities.

INVESTING IN THE PREFERRED SECURITIES INVOLVES RISKS. SEE "RISK FACTORS" BEGINNING ON PAGE 9.

THE PREFERRED SECURITIES ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OBLIGATIONS OF ANY BANK AND ARE NOT INSURED BY THE BANK INSURANCE FUND OF THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

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	PER PREFERRED SECURITY	TOTAL
	-----	-----
Public Offering Price.....	\$10.00	\$20,000,000
Proceeds to First Busey Capital Trust.....	\$10.00	\$20,000,000

This is a firm commitment underwriting. We will pay underwriting commissions of \$ per preferred security, or a total of \$ , for arranging the investment in our debentures. The underwriters have been granted a 30-day option to purchase up to an additional 300,000 preferred securities to cover over-allotments, if any.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

HOWE BARNES INVESTMENTS, INC.  
 , 2001

STEPHENS INC.

FIRST BUSEY CORPORATION

[MAP OF BANK LOCATIONS]

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- - YOU SHOULD ONLY RELY ON THE INFORMATION CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS. WE HAVE NOT, AND THE UNDERWRITERS HAVE NOT, AUTHORIZED ANY PERSON TO PROVIDE YOU WITH DIFFERENT INFORMATION. IF ANYONE PROVIDES YOU WITH DIFFERENT OR INCONSISTENT INFORMATION, YOU SHOULD NOT RELY ON IT.
- - WE ARE NOT, AND THE UNDERWRITERS ARE NOT, MAKING AN OFFER TO SELL THESE SECURITIES IN ANY JURISDICTION WHERE THE OFFER OR SALE IS NOT PERMITTED.
- - YOU SHOULD ASSUME THAT THE INFORMATION APPEARING IN THIS PROSPECTUS IS ACCURATE AS OF THE DATE ON THE FRONT COVER OF THIS PROSPECTUS ONLY.
- - THIS PROSPECTUS DOES NOT CONSTITUTE AN OFFER TO SELL, OR THE SOLICITATION OF AN OFFER TO BUY, ANY SECURITIES OTHER THAN THE SECURITIES TO WHICH IT RELATES.

## SUMMARY

This summary highlights information contained elsewhere in, or incorporated by reference into, this prospectus. Because this is a summary, it may not contain all of the information that is important to you. Therefore, you should also read the more detailed information set forth in this prospectus in addition to our financial statements and the other information that are incorporated by reference in this prospectus. Unless otherwise indicated, the information in this prospectus assumes that the underwriters will not exercise their option to purchase additional preferred securities to cover over-allotments.

## FIRST BUSEY CORPORATION

First Busey Corporation is a financial holding company located in Urbana, Illinois. We are engaged primarily in commercial and retail banking and we also provide trust, asset management, securities brokerage and insurance services. Based on assets of \$1.3 billion, deposits of \$1.1 billion and stockholders' equity of \$96.1 million as of March 31, 2001, we are one of the largest financial institutions headquartered in east central Illinois. Busey Bank, our largest subsidiary, has operated continuously since 1868 and is one of the oldest banks chartered in Illinois.

Our operations are conducted primarily through Busey Bank's 17 locations, Busey Bank fsb's six locations, and Busey Investment Group, Inc.'s location in Champaign, Illinois. Busey Bank is headquartered in Urbana, Illinois and services our customers through 14 locations in Champaign and Ford Counties in Illinois. Busey Bank also has one banking center in Indianapolis, Indiana and loan production offices in Ft. Myers and Naples, Florida. Electronic delivery of financial services is provided through Busey e-bank. Busey Bank fsb is a federal savings bank that serves primarily McLean County, Illinois, with five banking centers. Last year, Busey Bank fsb opened a banking center in Ft Myers, Florida. We currently anticipate merging Busey Bank fsb with and into Busey Bank in June 2001. Through its three subsidiaries, Busey Investment Group is dedicated to providing a full range of asset management, securities brokerage and insurance services to our customers.

## FINANCIAL SUMMARY

As reflected in the financial summary presented, over the last five years we have achieved profitable growth while expanding our presence into markets that we believe to be attractive, including the communities of Bloomington-Normal, Illinois and Ft. Myers, Florida.

	AS OF AND FOR THE THREE MONTHS ENDED MARCH 31,		AS OF AND FOR THE YEAR ENDED DECEMBER 31,				
	2001	2000	2000	1999	1998	1997	1996
			(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)				
Net income.....	\$ 4,098	\$ 3,607	\$ 14,053	\$ 12,548	\$ 11,398	\$ 10,371	\$ 9,306
Earnings per share (diluted)...	0.30	0.26	1.03	0.90	0.81	0.74	0.67
Total assets.....	1,331,401	1,227,487	1,355,044	1,247,123	951,531	915,540	864,918
Loans.....	972,533	899,245	984,369	886,684	662,281	602,937	569,500
Total deposits.....	1,131,789	1,009,426	1,148,787	1,027,981	826,704	811,453	766,927
Total stockholders' equity.....	96,135	81,927	92,325	82,284	87,103	81,279	73,417
Return on average assets.....	1.25%	1.18%	1.12%	1.22%	1.22%	1.18%	1.08%
Return on average equity.....	17.66	17.85	16.56	14.68	14.02	13.42	13.40
Allowance for loan losses to loans.....	1.29	1.19	1.25	1.17	1.07	1.14	1.08

## OPERATING STRATEGY

We directly compete with other financial institutions and businesses in both attracting and retaining deposits and making loans. To remain competitive within our markets, our management team, which has been together for over 20 years, developed, and is committed to, an operating strategy which includes:

- PROFITABLE GROWTH. Our earnings have increased through a combination of internal growth and acquisitions. Earnings per share have increased since 1990, at a compounded annual growth rate of 10.78%.

We are focused on increasing our return on average stockholders' equity, which has increased from 13.40% for 1996 to 16.56% for 2000.

Since our most significant operation is in the more mature markets of Champaign and Ford Counties, Illinois, our strategy in the past few years has included expansion into faster growing markets through acquisitions and opening new branches and loan production offices. As part of this strategy, we opened a branch in Indianapolis, acquired Eagle BancGroup, in Bloomington-Normal, Illinois, opened a loan production office in Naples and established our Ft. Myers branch. As our new locations mature, we expect them to have a positive impact on earnings. Consistent with this strategy, we will continue to seek to open new offices in similar areas.

- **STRONG COMMUNITY FOCUS.** We are committed to providing a full range of financial services, including commercial and retail banking services. Our operating strategy emphasizes the autonomous operation of our banking centers, allowing the local management team to tailor its services and products to the needs of each particular community. We are committed to local decision making and input. As a result of this community focus, we were the largest real estate mortgage originator in Champaign, Ford and McLean counties for fiscal year 2000. We strive to be a valuable partner in the communities we serve by establishing quality relationships with retail customers and local businesses.

- **STRONG CREDIT QUALITY.** Most of our loan officers have at least 15 years of experience, giving them significant knowledge in loan underwriting and in evaluating the economic environment of each community they serve. Loans are underwritten with an emphasis on analyzing the leverage of the applicant and the cash flow needed to repay the loan. All significant loan decisions are made through our loan committee structure, which is comprised of our most senior lenders and management officials from all locations. We actively monitor our credits through a risk-based grading system and loan review process. During the past five and ten year periods, we have experienced average net charge-offs of 0.07% and 0.09% of average loans, respectively.

- **FULL SERVICE BUSINESS BANK.** Because of the knowledge and expertise demonstrated by our commercial lenders, we were one of the first banks in the nation to be recognized by the Small Business Administration as a "preferred lender." This designation allows our commercial lenders to approve SBA loans at the time of application, making responsiveness and quick turnaround time a part of the service we provide to our customers. Our offices in Florida and Indiana have also been approved as "preferred lenders" by the SBA. Because of this high level of service, we originated \$6.0 million in SBA loans in fiscal 2000. In addition to our commitment to providing loans to our commercial customers, we offer a selection of cash management products not generally available from a bank our size. We also provide electronic banking services tailored for our commercial customers.

- **GROWING ASSET MANAGEMENT BUSINESS.** Busey Investment Group is our wholly owned subsidiary providing trust, asset management, securities brokerage and insurance services to our customers through its three subsidiaries. We are the largest investment management company in Champaign County, with assets under care of \$1.5 billion as of December 31, 2000. Busey Investment Group accounted for 12.65% of our net income in 2000.

Our principal executive offices are located at 201 West Main Street, Urbana, Illinois 61801, and our telephone number is (217) 365-4556.

## FIRST BUSEY CAPITAL TRUST I

First Busey Capital Trust is a newly formed subsidiary of First Busey Corporation. Upon issuance of the preferred securities offered by this prospectus, the purchasers in this offering will own all of the issued and outstanding preferred securities of First Busey Capital Trust. In exchange for our capital contribution to First Busey Capital Trust, we will own all of the common securities of First Busey Capital Trust. First Busey Capital Trust exists exclusively for the following purposes:

- issuing and selling the preferred securities to the public for cash;
- issuing and selling the common securities to us;
- investing the proceeds from the sale of the preferred and common securities in an equivalent amount of % subordinated debentures due , 2031, to be issued by us; and
- engaging in activities that are incidental to those listed above, such as receiving payments on the debentures, making distributions to security holders, furnishing notices and performing other administrative tasks.

First Busey Capital Trust's address is 201 West Main Street, Urbana, Illinois 61801, and its telephone number is (217) 365-4556.

## THE OFFERING

The issuer.....	First Busey Capital Trust I.
Securities being offered.....	2,000,000 preferred securities, which represent preferred undivided interests in the assets of First Busey Capital Trust. Those assets will consist solely of the debentures and payments received on the debentures.
	First Busey Capital Trust will sell the preferred securities to the public for cash. First Busey Capital Trust will use that cash to buy the debentures from us.
Offering price.....	\$10 per preferred security.
When First Busey Capital Trust will pay distributions to you.....	Your purchase of the preferred securities entitles you to receive cumulative cash distributions at a % annual rate. Distributions will accumulate from the date First Busey Capital Trust issues the preferred securities and are to be paid quarterly on March 30, June 30, September 30, and December 30 of each year, beginning September 30, 2001. As long as the preferred securities are represented by a global security, the record date for distributions on the preferred securities will be the business day prior to the distribution date. We may defer the payment of cash distributions, as described below, under "-- We have the option to extend the interest payment period."
When First Busey Capital Trust must redeem the preferred securities.....	The debentures will mature and we must redeem the preferred securities on , 2031. We have the option, however, to shorten the maturity date to a date not earlier than , 2006. We will not shorten the maturity date unless we have received the prior approval of the Board of Governors of the Federal Reserve System, if required by law or regulation.



Redemption of the preferred securities before , 2031 is possible.....

First Busey Capital Trust must redeem the preferred securities when the debentures are paid at maturity or upon any earlier redemption of the debentures to the extent the debentures are redeemed. We may redeem all or part of the debentures at any time on or after , 2006.

In addition, we may redeem all of the debentures, at any time, if:

- existing laws or regulations, or the interpretation or application of these laws or regulations, change, causing the interest we pay on the debentures to no longer be deductible by us for federal income tax purposes, or causing First Busey Capital Trust to become subject to federal income tax or to other taxes or governmental charges;
- existing laws or regulations change, requiring First Busey Capital Trust to register as an investment company; or
- the capital adequacy guidelines of the Federal Reserve change so that the preferred securities no longer qualify as Tier 1 capital.

We may also redeem the debentures at any time, and from time to time, in an amount equal to the liquidation amount of any preferred securities we purchase, plus a proportionate amount of common securities, but only in exchange for a like amount of the preferred securities and common securities that we then own.

Redemption of the debentures prior to maturity will be subject to the prior approval of the Federal Reserve, if approval is then required by law or regulation. If your preferred securities are redeemed by First Busey Capital Trust, you will receive the liquidation amount of \$10 per preferred security, plus any accrued and unpaid distributions to the date of redemption.

We have the option to extend the interest payment period...

First Busey Capital Trust will rely solely on payments made by us under the debentures to pay distributions on the preferred securities. As long as we are not in default under the indenture relating to the debentures, we may, at one or more times, defer interest payments on the debentures for up to 20 consecutive quarters, but not beyond , 2031. If we defer interest payments on the debentures:

- First Busey Capital Trust will also defer distributions on the preferred securities;
- the distributions you are entitled to will accumulate; and
- these accumulated distributions will earn interest at an annual rate of %, compounded quarterly, until paid.

At the end of any deferral period, we will pay to First Busey Capital Trust all accrued and unpaid interest under the

debentures. First Busey Capital Trust will then pay all accumulated and unpaid distributions to you.

You will still be taxed if distributions on the preferred securities are deferred.....

If a deferral of payment occurs, you must recognize the amount of the deferred distributions as income for federal income tax purposes in advance of receiving the actual cash distributions, even if you are a cash basis taxpayer.

Our full and unconditional guarantee of payment.....

Our obligations described in this prospectus, in the aggregate, constitute a full, irrevocable and unconditional guarantee on a subordinated basis by us of the obligations of First Busey Capital Trust under the preferred securities. Under the guarantee agreement, we guarantee that First Busey Capital Trust will use its assets to pay the distributions on the preferred securities and the liquidation amount upon liquidation of First Busey Capital Trust.

However, the guarantee does not apply when First Busey Capital Trust does not have sufficient funds to make the payments. If we do not make payments on the debentures, First Busey Capital Trust will not have sufficient funds to make payments on the preferred securities. In this event, your remedy is to institute a legal proceeding directly against us for enforcement of payments under the debentures.

We may distribute the debentures directly to you....

We may, at any time, dissolve First Busey Capital Trust and distribute the debentures to you, subject to the prior approval of the Federal Reserve, if required by law or regulation.

If we distribute the debentures, we will use our best efforts to either designate the debentures on The Nasdaq National Market or to list them on a national exchange, if the preferred securities are then included or listed.

How the securities will rank in right of payment.....

Our obligations under the preferred securities, debentures and guarantee are unsecured and will rank as follows with regard to right of payment:

- the preferred securities will rank equally with the common securities of First Busey Capital Trust. First Busey Capital Trust will pay distributions on the preferred securities and the common securities pro rata. However, if we default with respect to the debentures, then no distributions on the common securities of First Busey Capital Trust or our common stock will be paid until all accumulated and unpaid distributions on the preferred securities have been paid;
- our obligations under the debentures and the guarantee are unsecured and generally will rank junior in priority to our existing and future senior and subordinated indebtedness; and

- because we are a holding company, the debentures and the guarantee will effectively be subordinated to all depositors' claims, as well as existing and future liabilities of our subsidiaries.

Voting rights of the preferred securities.....

Except in limited circumstances, holders of the preferred securities will have no voting rights.

Proposed Nasdaq National Market symbol.....

BUSEP.

You will not receive certificates.....

The preferred securities will be represented by a global security that will be deposited with and registered in the name of The Depository Trust Company, New York, New York, or its nominee. As a result, you will not receive a certificate for the preferred securities, and your beneficial ownership interests will be recorded through the DTC book-entry system.

How the proceeds of this offering will be used.....

First Busey Capital Trust will invest all of the proceeds from the sale of the preferred securities in the debentures. We estimate that the net proceeds to us from the sale of the debentures to First Busey Capital Trust, after deducting underwriting expenses and commissions, will be approximately \$18.9 million. We expect to use the proceeds from the sale of the debentures to repay short-term borrowings. Once paid down, additional borrowing capability will be available to us for corporate use, including possible acquisitions.

Before purchasing the preferred securities being offered, you should carefully consider the "Risk Factors" beginning on page 9.

## SELECTED CONSOLIDATED FINANCIAL AND OTHER DATA

The following table sets forth our selected consolidated financial information and other data. Our consolidated financial statements for the five years ended December 31, 2000 have been audited by McGladrey & Pullen, LLP, independent accountants. The selected data presented below for the three-month periods ended March 31, 2001 and March 31, 2000 are derived from unaudited financial statements. You should read this information in conjunction with the consolidated financial statements and the notes to the financial statements incorporated by reference. Results for the three-month periods are unaudited but in the opinion of management reflect all necessary adjustments for a fair presentation of results as of the dates and for the periods covered. Results for past periods do not necessarily indicate the results that may be expected for future periods, and results for the three-month period ended March 31, 2001 do not necessarily indicate the results that may be expected for the entire year ending December 31, 2001.

	AS OF AND FOR THE THREE MONTHS ENDED MARCH 31,		AS OF AND FOR THE YEAR ENDED DECEMBER 31,				
	2001	2000	2000	1999	1998	1997	1996
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)							
<b>SELECTED INCOME DATA:</b>							
Interest income.....	\$ 24,349	\$ 21,744	\$ 93,242	\$ 72,311	\$ 67,048	\$ 63,831	\$ 61,197
Interest expense.....	13,581	11,465	50,476	34,920	32,975	31,119	30,033
Net interest income.....	10,768	10,279	42,766	37,391	34,073	32,712	31,164
Provision for loan losses.....	400	390	2,515	2,570	700	1,075	1,100
Net interest income after provision of loan losses.....	10,368	9,889	40,251	34,821	33,373	31,637	30,064
Other income:							
Service charges on deposit accounts.....	1,379	1,181	5,341	3,798	2,938	2,947	2,937
Trust fees.....	1,151	1,095	4,364	4,013	3,445	3,156	2,651
Commission and brokers' fees, net.....	597	408	1,901	1,472	1,187	1,051	812
Other service charges and fees.....	397	630	2,075	2,302	1,909	1,292	949
Securities gains (losses), net.....	651	(7)	737	1,035	1,243	520	256
Gain on sales of loans.....	433	446	1,112	895	988	439	268
Other.....	784	639	2,758	2,677	1,820	974	896
Total other income.....	5,392	4,392	18,288	16,192	13,530	10,379	8,769
Other expense:							
Salaries and wages.....	4,264	3,890	16,192	14,758	13,524	12,134	11,662
Employee benefits.....	968	727	2,888	2,807	2,571	2,481	2,206
Net occupancy expense of premises.....	802	725	3,115	2,690	2,497	2,225	1,936
Furniture and equipment expenses.....	971	817	3,614	3,320	2,370	1,838	1,651
Data processing.....	190	293	1,142	838	1,924	1,760	1,476
Amortization and impairment of intangible assets....	358	383	2,288	1,166	1,404	1,328	1,321
Stationery, supplies and printing.....	257	209	1,029	986	758	704	715
Other.....	1,518	1,671	6,981	6,498	5,352	4,796	4,819
Total other expense.....	9,328	8,715	37,249	33,063	30,400	27,266	25,786
Income before income taxes.....	6,432	5,566	21,290	17,950	16,503	14,750	13,047
Income taxes.....	2,334	1,959	7,237	5,402	5,105	4,379	3,741
Net income.....	\$ 4,098	\$ 3,607	\$ 14,053	\$ 12,548	\$ 11,398	\$ 10,371	\$ 9,306

	AS OF AND FOR THE THREE MONTHS ENDED MARCH 31,		AS OF AND FOR THE YEAR ENDED DECEMBER 31,				
	2001	2000	2000	1999	1998	1997	1996
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)							
PER SHARE DATA(1):							
Earnings per share (basic).....	\$ 0.30	\$ 0.27	\$ 1.05	\$ 0.92	\$ 0.83	\$ 0.75	\$ 0.68
Earnings per share (diluted).....	0.30	0.26	1.03	0.90	0.81	0.74	0.67
Cash dividends per common share.....	0.13	0.12	0.48	0.44	0.39	0.35	0.33
Book value per share.....	7.10	6.08	6.86	6.08	6.36	5.92	5.36
SELECTED FINANCIAL CONDITION DATA (AT END OF PERIOD):							
Total assets.....	\$1,331,401	\$1,227,487	\$1,355,044	\$1,247,123	\$951,531	\$915,540	\$864,918
Securities.....	220,528	227,585	228,597	225,046	217,991	215,514	226,350
Loans.....	972,533	899,245	984,369	886,684	662,281	602,937	569,500
Allowance for loan losses.....	12,577	10,698	12,268	10,403	7,101	6,860	6,131
Total deposits.....	1,131,789	1,009,426	1,148,787	1,027,981	826,704	811,453	766,927
Borrowings.....	91,601	126,897	104,149	127,756	30,900	16,550	19,405
Total stockholders' equity.....	96,135	81,927	92,325	82,284	87,103	81,279	73,417
PERFORMANCE RATIOS(2):							
Return on average assets.....	1.25%	1.18%	1.12%	1.22%	1.22%	1.18%	1.08%
Return on average equity.....	17.66	17.85	16.56	14.68	14.02	13.42	13.40
Net interest margin(3)...	3.60	3.74	3.75	4.03	4.10	4.20	4.13
Net interest spread(3)...	3.06	3.34	3.28	3.54	3.58	3.74	3.74
Average loan-to-average deposit ratio.....	86.35	87.82	90.30	84.10	77.50	74.90	68.92
ASSET QUALITY RATIOS(2):							
Non-performing loans to loans.....	0.62%	0.23%	0.55%	0.24%	0.24%	0.28%	0.18%
Allowance for loan losses to: Loans.....	1.29	1.19	1.25	1.17	1.07	1.14	1.08
Non-performing loans...	207.54	519.32	225.76	450.00	371.39	413.00	611.88
Net charge-offs to average loans.....	0.04	0.01	0.07	0.05	0.07	0.06	0.08
Non-performing assets to total assets.....	0.47	0.25	0.42	0.21	0.20	0.24	0.21
CAPITAL RATIOS:							
Stockholders' equity to assets.....	7.22%	6.67%	6.81%	6.60%	9.15%	8.88%	8.49%
Tier 1 risk-based capital.....	8.70	7.94	7.77	7.81	12.07	11.81	11.35
Total risk-based capital.....	10.37	9.48	9.43	9.40	13.23	13.01	12.48
Leverage ratio.....	5.89	5.62	5.71	5.62	7.87	7.61	7.14
RATIO OF EARNINGS TO FIXED CHARGES(4):							
Including deposit interest.....	1.45x	1.46x	1.40x	1.48x	1.47x	1.44x	1.41x
Excluding deposit interest.....	3.73	3.04	2.88	3.75	4.42	5.41	5.00

(1) Per share data has been restated to give retroactive effect to the 2-for-1 stock split which occurred in August 1998 and the 3-for-2 stock split which occurred in May 1996.

(2) Ratios for the three month periods have been annualized.

(3) Net interest margin represents net interest income as a percentage of average interest-earning assets, and net interest spread represents the difference between the weighted average yield on interest-earning assets and the weighted average cost of interest-bearing liabilities, both on a tax-equivalent basis.

(4) For purposes of calculating the ratio of earnings to fixed charges, earnings consist of income before taxes plus interest and net occupancy expense. Fixed charges consist of interest and net occupancy expense.

## RISK FACTORS

An investment in the preferred securities involves a number of risks. Some of these risks relate to the preferred securities and others relate to us and the financial services industry, generally. We urge you to read all of the information contained in this prospectus. In addition, we urge you to consider carefully the following factors in evaluating an investment in First Busey Capital Trust before you purchase the preferred securities offered by this prospectus.

Because First Busey Capital Trust will rely on the payments it receives on the debentures from us to fund all payments on the preferred securities, and because First Busey Capital Trust may distribute the debentures in exchange for the preferred securities, purchasers of the preferred securities are making an investment decision that relates to the debentures being issued by us as well as the preferred securities. Purchasers should carefully review the information in the prospectus about the preferred securities, the debentures and the guarantee.

## RISKS RELATED TO AN INVESTMENT IN THE PREFERRED SECURITIES

IF WE DO NOT MAKE INTEREST PAYMENTS UNDER THE DEBENTURES, FIRST BUSEY CAPITAL TRUST WILL BE UNABLE TO PAY DISTRIBUTIONS AND LIQUIDATION AMOUNTS. OUR GUARANTEE WILL NOT APPLY BECAUSE THE GUARANTEE COVERS PAYMENTS ONLY IF FIRST BUSEY CAPITAL TRUST HAS FUNDS AVAILABLE.

First Busey Capital Trust will depend solely on our payments on the debentures to pay amounts due to you on the preferred securities. If we default on our obligation to pay the principal or interest on the debentures, First Busey Capital Trust will not have sufficient funds to pay distributions or the liquidation amount on the preferred securities. In that case, you will not be able to rely on the guarantee for payment of these amounts because the guarantee only applies if First Busey Capital Trust has sufficient funds to make distributions on or to pay the liquidation amount of the preferred securities. Instead, you or the property trustee will have to institute a direct action against us to enforce the property trustee's rights under the indenture relating to the debentures.

TO THE EXTENT WE MUST RELY ON DIVIDENDS FROM OUR SUBSIDIARIES TO MAKE INTEREST PAYMENTS ON THE DEBENTURES TO FIRST BUSEY CAPITAL TRUST, OUR AVAILABLE CASH FLOW MAY BE RESTRICTED AND DISTRIBUTIONS MAY BE DEFERRED.

We are a holding company and substantially all of our assets are held by our direct and indirect subsidiaries. Our ability to make payments on the debentures when due will depend primarily on available cash resources at the bank holding company level and dividends from our direct and indirect subsidiaries. Dividend payments or extensions of credit from our banking subsidiaries are subject to regulatory limitations, generally based on capital levels and current and retained earnings, imposed by the various regulatory agencies with authority over such subsidiary. The ability of our banking subsidiary to pay dividends is also subject to its profitability, financial condition, capital expenditures and other cash flow requirements. We cannot assure you that our direct and indirect subsidiaries will be able to pay dividends in the future.

REGULATORS MAY PRECLUDE US FROM MAKING DISTRIBUTIONS ON THE DEBENTURES IN THE EVENT OUR REGULATORY CAPITAL, LIQUIDITY OR FINANCIAL PERFORMANCE DETERIORATES.

We and our subsidiaries are subject to extensive federal and state law, regulation and supervision. Our regulators monitor our financial condition on a periodic basis and may impose limitations on our operations and business activities under various circumstances. In response to any perceived deficiencies in liquidity or regulatory capital levels, our regulators may require us to obtain their consent prior to paying dividends on our capital stock or interest on the debentures. In the event our regulators withheld their consent to our payment of interest on the debentures, we would exercise our right to defer interest payments on the debentures, and First Busey Capital Trust would not have funds available to make distributions on the preferred securities during this deferral period. Our regulators could take this action alone or in conjunction with similar restrictions on the ability of our subsidiaries to pay dividends to us.

The commencement of a deferral period with respect to interest on the debentures and, accordingly, distributions on the preferred securities, would likely cause the market price of the preferred securities to decline.

THE DEBENTURES AND THE GUARANTEE RANK LOWER THAN MOST OF OUR OTHER INDEBTEDNESS, AND OUR HOLDING COMPANY STRUCTURE EFFECTIVELY SUBORDINATES ANY CLAIMS AGAINST US TO THOSE OF OUR SUBSIDIARIES' CREDITORS.

Our obligations under the debentures and the guarantee are unsecured and will rank junior in priority of payment to our existing and future senior and subordinated indebtedness. As of March 31, 2001, we had approximately \$73.0 million outstanding principal amount of existing senior and subordinated indebtedness. The issuance of the debentures and the preferred securities does not limit our ability or the ability of our subsidiaries to incur additional indebtedness, guarantees or other liabilities.

Because we are a holding company, our creditors, including depositors, also will have priority over you in any distribution of our assets in liquidation, reorganization or otherwise. Accordingly, the debentures and the guarantee will be effectively subordinated to all existing and future liabilities of our direct and indirect subsidiaries, and you should look only to our assets for payments on the preferred securities and the debentures.

WE MAY DEFER INTEREST PAYMENTS ON THE DEBENTURES FOR SUBSTANTIAL PERIODS, WHICH COULD HAVE ADVERSE CONSEQUENCES FOR YOU.

We may, at one or more times, defer interest payments on the debentures for up to 20 consecutive quarters. If we defer interest payments on the debentures, First Busey Capital Trust will defer distributions on the preferred securities during any deferral period. During a deferral period, you will be required to recognize as income for federal income tax purposes the amount approximately equal to the interest that accrues on your proportionate share of the debentures held by First Busey Capital Trust in the tax year in which that interest accrues, even though you will not receive these amounts until a later date.

You will also not receive the cash related to any accrued and unpaid interest from First Busey Capital Trust if you sell the preferred securities before the end of any deferral period. During a deferral period, accrued but unpaid distributions will increase your tax basis in the preferred securities. If you sell the preferred securities during a deferral period, your increased tax basis will decrease the amount of any capital gain or increase the amount of any capital loss that you may have otherwise realized on the sale. A capital loss, except in certain limited circumstances, cannot be applied to offset ordinary income. As a result, deferral of distributions could result in ordinary income, and a related tax liability for the holder, and a capital loss that may only be used to offset a capital gain.

We do not currently intend to exercise our right to defer interest payments on the debentures. However, in the event of a deferral period, the market price of the preferred securities would likely be adversely affected. The preferred securities may trade at a price that does not fully reflect the value of accrued but unpaid interest on the debentures. If you sell the preferred securities during a deferral period, you may not receive the same return on investment as someone who continues to hold the preferred securities. Due to our right to defer interest payments, the market price of the preferred securities may be more volatile than the market prices of other securities without the deferral feature.

WE HAVE MADE ONLY LIMITED COVENANTS IN THE INDENTURE AND THE TRUST AGREEMENT, WHICH MAY NOT PROTECT YOUR INVESTMENT IN THE EVENT WE EXPERIENCE SIGNIFICANT ADVERSE CHANGES IN OUR FINANCIAL CONDITION OR RESULTS OF OPERATIONS.

The indenture governing the debentures and the trust agreement governing First Busey Capital Trust do not require us to maintain any financial ratios or specified levels of net worth, revenues, income, cash flow or liquidity, and therefore do not protect holders of the debentures or the preferred securities in the event we experience significant adverse changes in our financial condition or results of operations. In addition, neither the indenture nor the trust agreement limits our ability or the ability of our subsidiaries to incur additional indebtedness. Therefore, you should not consider the provisions of these governing

instruments as a significant factor in evaluating whether we will be able to comply with our obligations under the debentures or the guarantee.

IN THE EVENT WE REDEEM THE DEBENTURES BEFORE \_\_\_\_\_, 2031, YOU MAY NOT BE ABLE TO REINVEST YOUR PRINCIPAL AT THE SAME OR A HIGHER RATE OF RETURN.

Under the following circumstances, we may redeem the debentures before their stated maturity.

- We may redeem the debentures, in whole or in part, at any time on or after \_\_\_\_\_, 2006.
- We may redeem the debentures in whole, but not in part, within 180 days after certain occurrences at any time during the life of First Busey Capital Trust. These occurrences may include adverse tax, investment company or bank regulatory developments. See "Description of the Debentures -- Redemption" beginning on page 33.

You should assume that we will exercise our redemption option if we are able to obtain capital at a lower cost than we must pay on the debentures or if it is otherwise in our interest to redeem the debentures. If we do so, First Busey Capital Trust must redeem preferred securities having an aggregate liquidation amount equal to the aggregate principal amount of debentures redeemed, and you may be required to reinvest your principal at a time when you may not be able to earn a return that is as high as you were earning on the preferred securities.

WE CAN DISTRIBUTE THE DEBENTURES TO YOU, WHICH MAY HAVE ADVERSE TAX CONSEQUENCES FOR YOU AND WHICH MAY ADVERSELY AFFECT THE MARKET PRICE OF THE PREFERRED SECURITIES PRIOR TO SUCH DISTRIBUTION.

First Busey Capital Trust may be dissolved at any time before maturity of the debentures on \_\_\_\_\_, 2031. As a result, and subject to the terms of the trust agreement, the trustees may distribute the debentures to you.

We cannot predict the market prices for the debentures that may be distributed in exchange for preferred securities upon liquidation of First Busey Capital Trust. The preferred securities, or the debentures that you may receive if First Busey Capital Trust is liquidated, may trade at a discount to the price that you paid to purchase the preferred securities. Because you may receive debentures, your investment decision with regard to the preferred securities will also be an investment decision with regard to the debentures. You should carefully review all of the information contained in this prospectus regarding the debentures.

If First Busey Capital Trust is classified for federal income tax purposes as an association taxable as a corporation at the time it is dissolved, the distribution of the debentures would be a taxable event to First Busey Capital Trust and you. In addition, if there is a change in law, a distribution of debentures upon the dissolution of First Busey Capital Trust could be a taxable event to First Busey Capital Trust and you.

YOU ARE SUBJECT TO REPAYMENT RISK BECAUSE POSSIBLE TAX LAW CHANGES COULD RESULT IN A REDEMPTION OF THE PREFERRED SECURITIES.

Future legislation may be enacted that could adversely affect our ability to deduct our interest payments on the debentures for federal income tax purposes, making early redemption of the debentures likely and resulting in redemption of the preferred securities.

From time to time, Congress has proposed federal income tax law changes that would, among other things, generally deny corporate issuers a deduction for interest in respect of certain debt obligations depending on their terms. These proposals have not been enacted into law. Although it is impossible to predict whether future proposals of this nature will be introduced and enacted with application to already issued and outstanding securities, if they are, we could be precluded from deducting interest on the debentures. Enactment of this type of proposal might in turn give rise to a tax event as described under "Description of the Preferred Securities -- Redemption or Exchange -- Redemption upon a Tax Event, Investment Company Event or Capital Treatment Event" beginning on page 21.



TRADING CHARACTERISTICS OF THE PREFERRED SECURITIES MAY CREATE ADVERSE TAX CONSEQUENCES FOR YOU.

The preferred securities may trade at a price that does not reflect the value of accrued but unpaid interest on the underlying debentures. If you dispose of your preferred securities between record dates for distributions on the preferred securities, you may have adverse tax consequences. Under these circumstances, you will be required to include accrued but unpaid interest on the debentures allocable to the preferred securities through the date of disposition in your income as ordinary income if you use the accrual method of accounting or if this interest represents original issue discount.

If interest on the debentures is included in income under the original issue discount provisions, you would add this amount to your adjusted tax basis in your share of the underlying debentures deemed disposed. If your selling price is less than your adjusted tax basis, which will include all accrued but unpaid original issue discount interest included in your income, you could recognize a capital loss which, subject to limited exceptions, cannot be applied to offset ordinary income for federal income tax purposes. See "Material Federal Income Tax Consequences" beginning on page 45, for more information on possible adverse tax consequences to you.

THERE IS NO CURRENT PUBLIC MARKET FOR THE PREFERRED SECURITIES, AND THEIR MARKET PRICE MAY DECLINE AFTER YOU INVEST.

There is currently no public market for the preferred securities. Although we have applied for designation of the preferred securities on Nasdaq, there is no guarantee that an active or liquid trading market will develop for the preferred securities or that the inclusion of the preferred securities will continue on Nasdaq. If an active trading market does not develop, the market price and liquidity of the preferred securities will be adversely affected. Even if an active public market does develop, there is no guarantee that the market price for the preferred securities will equal or exceed the price you pay for the preferred securities.

Future trading prices of the preferred securities may be subject to significant fluctuations in response to prevailing interest rates, our future operating results and financial condition, the market for similar securities and general economic and market conditions. The initial public offering price of the preferred securities has been determined by us and the underwriters and may be greater than the market price following the offering.

The market price for the preferred securities, or the debentures that you may receive in a distribution, is also likely to decline during any period that we are deferring interest payments on the debentures.

YOU MUST RELY ON THE PROPERTY TRUSTEE TO ENFORCE YOUR RIGHTS IF THERE IS AN EVENT OF DEFAULT UNDER THE INDENTURE.

You may not be able to directly enforce your rights against us if an event of default under the indenture occurs. If an event of default under the indenture occurs and is continuing, this event will also be an event of default under the trust agreement. In that case, you must rely on the enforcement by the property trustee of its rights as holder of the debentures against us. The holders of a majority in liquidation amount of the preferred securities will have the right to direct the property trustee to enforce its rights.

If the property trustee does not enforce its rights following an event of default and a request by the record holders to do so, any record holder may, to the extent permitted by applicable law, take action directly against us to enforce the property trustee's rights. If an event of default occurs under the trust agreement that is attributable to our failure to pay interest or principal on the debentures, or if we default under the guarantee, you may proceed directly against us. You will not be able to exercise directly any other remedies available to the holders of the debentures unless the property trustee fails to do so.

AS A HOLDER OF PREFERRED SECURITIES, YOU HAVE LIMITED VOTING RIGHTS, AND WE CAN AMEND THE TRUST AGREEMENT TO CHANGE THE TERMS AND CONDITIONS OF THE ADMINISTRATION, OPERATION AND MANAGEMENT OF FIRST BUSEY CAPITAL TRUST WITHOUT YOUR CONSENT.

Holders of preferred securities have limited voting rights. We can, without your consent, make certain amendments to the trust agreement. Your voting rights pertain primarily to certain amendments to the trust agreement and not to the administration, operation or management of First Busey Capital Trust. In general, only we can replace or remove any of the trustees. However, if an event of default under the trust agreement occurs and is continuing, the holders of at least a majority in aggregate liquidation amount of the preferred securities may replace the property trustee and the Delaware trustee.

In certain circumstances, with the consent of the holders of a majority in the aggregate liquidation amount of the preferred securities, we may amend the trust agreement to ensure that First Busey Capital Trust remains classified for federal income tax purposes as a grantor trust and to ensure that First Busey Capital Trust retains its exemption from status as an "investment company" under the Investment Company Act, even if such amendment adversely affects your rights as a holder of preferred securities. For more information regarding limitations on your ability to control amendments to the trust agreement, see "Description of the Preferred Securities -- Voting Rights; Amendment of Trust Agreement" beginning on page 27.

THE PREFERRED SECURITIES ARE NOT INSURED.

Neither the FDIC nor any other governmental agency has insured the preferred securities, the guarantee or the debentures.

#### RISKS RELATED TO AN INVESTMENT IN FIRST BUSEY CORPORATION

WE FACE INTENSE COMPETITION IN ALL PHASES OF OUR BUSINESS FROM OTHER BANKS AND FINANCIAL INSTITUTIONS.

We compete for deposits with a large number of depository institutions including commercial banks, savings and loan associations, credit unions, money market funds and other financial institutions and financial intermediaries serving Champaign, McLean and Ford Counties in Illinois, Hamilton County in Indiana and Lee and Collier Counties in Florida. Principal competitive factors with respect to deposits include interest rates paid on deposits, customer service, convenience and location.

We compete for loans with other banks headquartered in Illinois, Indiana and Florida, with loan production offices of large money center banks headquartered in other states, as well as with savings and loan associations, credit unions, finance companies, mortgage bankers, leasing companies and other institutions. Competitive factors with respect to loans include interest rates charged, customer service and responsiveness in tailoring financial products to the needs of customers. We compete for loans primarily by designing our products for and directing our marketing efforts to businesses in the markets they serve and that are locally owned, well-capitalized and well-managed.

Many of the entities that we compete with are substantially larger in size, and many non-bank financial intermediaries are not subject to the regulatory restrictions applicable to our bank subsidiaries. We have experienced an increase in the level of competition as well as the number of competitors in recent years.

OUR CONTINUED PACE OF GROWTH MAY REQUIRE US TO RAISE ADDITIONAL CAPITAL IN THE FUTURE, BUT THAT CAPITAL MAY NOT BE AVAILABLE WHEN IT IS NEEDED.

We are required by federal and state regulatory authorities to maintain adequate levels of capital to support our operations. We anticipate that our existing capital resources and the net proceeds from the sale of preferred securities in this offering will satisfy our immediately foreseeable capital requirements. However, to the extent we continue to expand our asset base, primarily through loan growth, we will be required to support such growth by increasing our capital to acceptable regulatory levels. Accordingly, we may need to raise additional capital in the future to support continued asset growth.

Our ability to raise additional capital if we need it to support loan growth in the future will depend on conditions in the capital markets, which are outside of our control, and on our financial performance. Accordingly, we cannot assure you of our ability to raise additional capital when needed or on favorable terms. If we cannot raise additional capital when needed, we will be subject to increased regulatory supervision and the imposition of restrictions on our growth and our business. These could negatively impact our ability to further expand our operations through acquisitions or the establishment of additional branches and result in increases in operating expenses and reductions in revenues that would harm our operating results.

WE RELY HEAVILY ON OUR MANAGEMENT TEAM, AND THE UNEXPECTED LOSS OF KEY MANAGERS MAY ADVERSELY AFFECT OUR OPERATIONS.

Much of our success to date has been influenced strongly by our ability to attract and to retain senior management experienced in banking and financial services. Our ability to retain executive officers, the current management teams and loan officers of our operating subsidiaries will continue to be important to the successful implementation of our strategies. It is also critical, as we grow, to be able to attract and retain additional qualified management and loan officers. The unexpected loss of services of any key management personnel, or the inability to recruit and retain qualified personnel in the future, could have an adverse effect on our business, financial condition and results of operations.

WE MAY NOT BE ABLE TO IMPLEMENT SUCCESSFULLY OUR STRATEGY TO ENTER NEW MARKETS WHICH WOULD SLOW OUR GROWTH AND NEGATIVELY IMPACT OUR EARNINGS.

Our strategic plan includes expansion into new markets by acquisitions or by establishing new branches and offices. The establishment of new offices requires a significant expenditure of capital in order to prepare the facilities for operation and additional expense in order to staff these new facilities. As our new offices mature and grow, we are able to spread our overhead costs over a broader asset base. While our new offices are generating loan activity consistent with our projections, we may encounter unanticipated difficulties that could adversely affect future profitability. In addition, we cannot assure you that we will be able to successfully operate and manage our operations in new markets or recover our initial capital investment in such operations. To the extent that we expand, we may experience the effects of higher operating expenses relative to operating income from the new offices.

OUR ALLOWANCE FOR LOAN LOSSES MAY PROVE TO BE INSUFFICIENT TO ABSORB POTENTIAL LOSSES IN OUR LOAN PORTFOLIO.

We established our allowance for loan losses in consultation with management of our bank subsidiaries and maintain it at a level considered adequate by management to absorb loan losses that are inherent in the portfolio. The amount of future loan losses is susceptible to changes in economic, operating and other conditions, including changes in interest rates, that may be beyond our control, and such losses may exceed current estimates. At March 31, 2001, our allowance for loan losses as a percentage of total loans was 1.29% and as a percentage of total non-performing loans was 207.54%. Although management believes that the allowance for loan losses is adequate to absorb losses on any existing loans that may become uncollectible, we cannot predict loan losses with certainty, and we cannot assure you that our allowance for loan losses will prove sufficient to cover actual loan losses in the future. Loan losses in excess of our reserves may adversely affect our business, financial condition and results of operations.

OUR LOAN PORTFOLIO IS CONCENTRATED HEAVILY IN REAL ESTATE LOANS, WHICH INVOLVE RISKS SPECIFIC TO REAL ESTATE VALUE.

At March 31, 2001, approximately 81.10% of our loan portfolio was secured by real estate. Although a significant portion of such loans are secured by real estate as a secondary source of collateral, adverse developments affecting real estate values in one or more of our markets could increase the credit risk associated with our loan portfolio. Additionally, if the loans are not repaid according to their terms, the real estate securing the loans, in those cases where real estate serves as the primary collateral, may not have a value equal to the amounts owed under the loan. Declines in the national economy or local economies of Champaign-Urbana and Bloomington-Normal, Illinois, Indianapolis, Indiana or

Ft. Myers/Naples, Florida could result in a decrease in real estate valuations and have an adverse impact on our financial condition.

OUR BUSINESS IS SUBJECT TO CREDIT RISKS WHICH MAY ADVERSELY AFFECT OUR EARNINGS.

Our loan customers may not repay their loans according to their terms, and collateral securing their loans, if any, may not have a value equal to amounts owed under their loans. Like many other financial institutions, we are concerned about the possible continued softening of the economy in 2001. Should the economic climate continue to deteriorate, borrowers may experience difficulty, and the level of non-performing loans, charge-offs, and delinquencies could rise and require further increases in the provision for loan losses which may cause our net income to decrease.

#### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in or incorporated by reference into this prospectus constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and are including this statement for purposes of invoking these safe harbor provisions. You can identify these statements from our use of the words "estimate," "project," "believe," "intend," "anticipate," "expect," "target" and similar expressions. These forward-looking statements may include, among other things:

- statements relating to anticipated improvements in earnings, earnings per share, and other financial performance;
- statements relating to projected growth and management's long term performance goals;
- statements relating to the anticipated effects on results of operations or financial condition from expected developments or events;
- statements relating to our business and growth strategies, including potential mergers and acquisitions; and
- any other statements which are not historical facts.

Such forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause our actual results, performance or achievements, or industry results, to differ materially from our expectations of future results, performance or achievements expressed or implied by such forward-looking statements. In addition, our past results of operations do not necessarily indicate our future results. We discuss these and other uncertainties in the "Risk Factors" section of this prospectus beginning on page 9.

The forward-looking statements included or incorporated by reference into this prospectus are made only as of the date of this prospectus or the date of the document incorporated by reference, as applicable. We do not intend, and undertake no obligation, to update these forward looking statements.

#### USE OF PROCEEDS

First Busey Capital Trust will invest all of the proceeds from the sale of the preferred securities in the debentures. We anticipate that the net proceeds from the sale of the debentures will be approximately \$18.9 million after deduction of offering expenses and underwriting commissions estimated to be \$1.1 million.

We expect to use the proceeds from the sale of the debentures to repay holding company indebtedness currently outstanding. Our holding company debt consists of a line of credit and term loan in the aggregate amount of \$35.0 million from an unaffiliated lender, \$28.7 million of which was outstanding at March 31, 2001 and which accrues interest on the outstanding principal balance at 6.73%. Once paid down, additional borrowing capability will be available to us for corporate use, including possible acquisitions. Although we engage in exploratory discussions regarding potential acquisitions from time to time, we do not currently have any commitments to acquire or merge with any financial institutions.

## CAPITALIZATION

The following table sets forth our total capitalization at March 31, 2001, on a historical basis and as adjusted for the offering and the application of the estimated net proceeds from the corresponding sale of the debentures, as if such sale had been consummated on March 31, 2001. You should read this data in conjunction with the consolidated financial statements and notes to the financial statements incorporated by reference into this prospectus from our Annual Report on Form 10-K for the fiscal year ended December 31, 2000 and from our Quarterly Report on Form 10-Q for the quarter ended March 31, 2001. See "Documents Incorporated by Reference" on page 52.

	MARCH 31, 2001	
	ACTUAL	AS ADJUSTED
	(DOLLARS IN THOUSANDS)	
<b>INDEBTEDNESS:</b>		
Short-term borrowings.....	\$ 30,983	\$ 12,123
Long-term debt.....	42,994	42,994
COMPANY OBLIGATED MANDATORILY REDEEMABLE PREFERRED SECURITIES OF SUBSIDIARY TRUST HOLDING SOLELY SUBORDINATED DEBENTURES(1).....		
	\$ --	\$ 20,000
	=====	=====
<b>STOCKHOLDERS' EQUITY:</b>		
Common stock, no par value; 40,000,000 shares authorized; 13,535,432 shares issued and outstanding.....	\$ 6,291	\$ 6,291
Surplus.....	21,861	21,861
Retained earnings.....	75,565	75,565
Accumulated other comprehensive income.....	6,973	6,973
Treasury stock.....	(12,267)	(12,267)
Unearned ESOP shares.....	(2,283)	(2,283)
Deferred compensation for stock grants.....	(5)	(5)
	-----	-----
Total stockholders' equity.....	\$ 96,135	\$ 96,135
	=====	=====
<b>CAPITAL RATIOS(2):</b>		
Leverage(3).....	5.89%	7.41%
Tier 1 risk-based capital(4).....	8.70	10.92
Total risk-based capital(4).....	10.37	12.62

(1) First Busey Capital Trust I, our wholly owned subsidiary, will hold, as its sole asset, \$20 million in principal amount of subordinated debentures related to the preferred securities.

(2) The capital ratios, as adjusted, are computed including the estimated net proceeds from the sale of the preferred securities, in a manner consistent with Federal Reserve regulations.

(3) The leverage ratio is core capital divided by average quarterly assets, after deducting goodwill and other intangible assets.

(4) The preferred securities have been structured to qualify as Tier 1 capital. However, in calculating the amount of Tier 1 qualifying capital, the preferred securities can only be included up to the amount constituting 25% of total Tier 1 capital. As adjusted for this offering, our Tier 1 capital as of March 31, 2001, would have been approximately \$97.0 million, of which \$20.0 million would have been attributable to the preferred securities.

## ACCOUNTING AND REGULATORY TREATMENT

First Busey Capital Trust will be treated, for financial reporting purposes, as our subsidiary and, accordingly, the accounts of First Busey Capital Trust will be included in our consolidated financial statements. The preferred securities will be presented as a separate line item in our consolidated balance sheet under a separate caption. In addition, appropriate disclosures about the preferred securities, the guarantee and the debentures will be included in the notes to our consolidated financial statements. For financial reporting purposes, we will record distributions payable on the preferred securities in our consolidated statements of income.

Our future reports filed under the Exchange Act will include a footnote to the audited consolidated financial statements stating that:

- First Busey Capital Trust is wholly-owned;
- the sole assets of First Busey Capital Trust are the debentures, specifying the debentures' outstanding principal amount, interest rate and maturity date; and
- our obligations described in this prospectus, in the aggregate, constitute a full, irrevocable and unconditional guarantee on a subordinated basis by us of the obligations of First Busey Capital Trust under the preferred securities.

Under accounting rules of the Securities and Exchange Commission, we are not required to include separate financial statements of First Busey Capital Trust in this prospectus because we will own all of the voting securities of First Busey Capital Trust, First Busey Capital Trust has no independent operations and we guarantee the payments on the preferred securities to the extent described in this prospectus.

## DESCRIPTION OF FIRST BUSEY CAPITAL TRUST

First Busey Capital Trust is a statutory business trust formed pursuant to the Delaware Business Trust Act under a trust agreement executed by us, as depositor, and the trustees named in the trust agreement. A certificate of trust has been filed with the Delaware Secretary of State. The trust agreement will be amended and restated in its entirety in the form filed as an exhibit to the registration statement of which this prospectus is a part, as of the date the preferred securities are initially issued. The trust agreement will be qualified under the Trust Indenture Act of 1939.

The following discussion contains a description of the material terms of the trust agreement of First Busey Capital Trust and is subject to, and qualified in its entirety by reference to, the amended and restated trust agreement and the Trust Indenture Act. We urge prospective investors to read the form of amended and restated trust agreement, which is filed as an exhibit to the registration statement of which this prospectus forms a part.

The holders of the preferred securities issued pursuant to the offering described in this prospectus will own all of the issued and outstanding preferred securities of First Busey Capital Trust, which have certain prior rights over the other securities of First Busey Capital Trust. We will not initially own any of the preferred securities. We will acquire common securities in an amount equal to at least 3% of the total capital of First Busey Capital Trust and will initially own, directly or indirectly, all of the issued and outstanding common securities. The common securities, together with the preferred securities, are called the trust securities.

First Busey Capital Trust exists exclusively for the purposes of:

- issuing the preferred securities to the public for cash;
- issuing its common securities to us in exchange for our capitalization of First Busey Capital Trust;
- investing the proceeds from the sale of the trust securities in an equivalent amount of our debentures; and
- engaging in other activities that are incidental to those listed above.

The rights of the holders of the trust securities are as set forth in the trust agreement, the Delaware Business Trust Act and the Trust Indenture Act. The trust agreement does not permit First Busey Capital Trust to borrow money or make any investment other than in the debentures. Other than with respect to the trust securities, we have agreed to pay for all debts and obligations and all costs and expenses of First Busey Capital Trust, including the fees and expenses of the trustees and any income taxes, duties and other governmental charges, and all costs and expenses related to these charges, to which First Busey Capital Trust may become subject, except for federal withholding taxes that are properly withheld.

The number of trustees of First Busey Capital Trust will initially be five. Three of the trustees will be persons who are our employees. They are the administrative trustees. The fourth trustee will be an entity that maintains its principal place of business in the State of Delaware. It is the Delaware trustee. Initially, Wilmington Trust Company, a Delaware banking corporation, will act as Delaware trustee. The fifth trustee, called the property trustee, will also initially be Wilmington Trust Company. The property trustee is the institutional trustee under the trust agreement and acts as the indenture trustee called for under the applicable provisions of the Trust Indenture Act. Also for purposes of compliance with the Trust Indenture Act, Wilmington Trust Company will act as guarantee trustee and indenture trustee under the guarantee agreement and the indenture. See "Description of the Debentures" beginning on page 31 and "Description of the Guarantee" beginning on page 41. We, as holder of all of the common securities, will have the right to appoint or remove any trustee unless an event of default under the indenture has occurred and is continuing, in which case only the holders of the preferred securities may remove the Delaware trustee or the property trustee. First Busey Capital Trust has a term of approximately 30 years but may terminate earlier as provided in the trust agreement.

The property trustee will hold the debentures for the benefit of the holders of the trust securities and will have the power to exercise all rights, powers and privileges under the indenture as the holder of the debentures. In addition, the property trustee will maintain exclusive control of a segregated noninterest-bearing "payment account" established with Wilmington Trust Company to hold all payments made on the debentures for the benefit of the holders of the trust securities. The property trustee will make payments of distributions and payments on liquidation, redemption and otherwise to the holders of the trust securities out of funds from the payment account. The guarantee trustee will hold the guarantee for the benefit of the holders of the preferred securities. We will pay all fees and expenses related to First Busey Capital Trust and the offering of the preferred securities, including the fees and expenses of the trustees.

#### DESCRIPTION OF THE PREFERRED SECURITIES

The preferred securities will be issued pursuant to the trust agreement. For more information about the trust agreement, see "Description of First Busey Capital Trust" beginning on page 18. Wilmington Trust Company will act as property trustee for the preferred securities under the trust agreement for purposes of complying with the provisions of the Trust Indenture Act. The terms of the preferred securities will include those stated in the trust agreement and those made a part of the trust agreement by the Trust Indenture Act.

The following discussion contains a description of the material provisions of the preferred securities and is subject to, and is qualified in its entirety by reference to, the trust agreement and the Trust Indenture Act. We urge prospective investors to read the form of amended and restated trust agreement, which is filed as an exhibit to the registration statement of which this prospectus forms a part.

#### GENERAL

The trust agreement authorizes the administrative trustees, on behalf of First Busey Capital Trust, to issue the trust securities, which are comprised of 2,000,000 preferred securities to be sold to the public and 61,856 common securities, which we will acquire. In the event the underwriters exercise their over-allotment option, the trust agreement authorizes the administrative trustees, on behalf of First Busey Capital Trust, to issue an additional 300,000 preferred securities to the public and 9,278 common securities to us. We will own all of the common securities issued by First Busey Capital Trust. First Busey Capital Trust is not permitted to issue any securities other than the trust securities or to incur any indebtedness.

The preferred securities will represent preferred undivided beneficial interests in the assets of First Busey Capital Trust, and the holders of the preferred securities will be entitled to a preference over the common securities upon an event of default with respect to distributions and amounts payable on redemption or liquidation. The preferred securities will rank equally, and payments on the preferred securities will be made proportionally, with the common securities, except as described under "-- Subordination of Common Securities" on page 23.

The property trustee will hold legal title to the debentures in First Busey Capital Trust for the benefit of the holders of the trust securities. We will guarantee the payment of distributions out of money held by First Busey Capital Trust, and payments upon redemption of the preferred securities or liquidation of First Busey Capital Trust, to the extent described under "Description of the Guarantee" beginning on page 41. The guarantee agreement does not cover the payment of any distribution or the liquidation amount when First Busey Capital Trust does not have sufficient funds available to make these payments.

#### DISTRIBUTIONS

Source of Distributions. The funds of First Busey Capital Trust available for distribution to holders of the preferred securities will be limited to payments made under the debentures, which First Busey Capital Trust will purchase with the proceeds from the sale of the trust securities. Distributions will be paid through the property trustee, which will hold the amounts received from our interest payments on the debentures in the payment account for the benefit of the holders of the trust securities. If we do not make



interest payments on the debentures, the property trustee will not have funds available to pay distributions on the preferred securities.

Payment of Distributions. Distributions on the preferred securities will be payable at the annual rate of % of the \$10 stated liquidation amount, payable quarterly on March 30, June 30, September 30, and December 30 of each year, to the holders of the preferred securities on the relevant record dates. So long as the preferred securities are represented by a global security, as described below, the record date will be the business day immediately preceding the relevant distribution date. The first distribution date for the preferred securities will be September 30, 2001.

Distributions will accumulate from the date of issuance, will be cumulative and will be computed on the basis of a 360-day year of twelve 30-day months. If the distribution date is not a business day, then payment of the distributions will be made on the next day that is a business day, without any additional interest or other payment for the delay. However, if the next business day is in the next calendar year, payment of the distribution will be made on the business day immediately preceding the scheduled distribution date. When we use the term "business day" we mean any day other than a Saturday, a Sunday, a day on which banking institutions in New York, New York are authorized or required by law, regulation or executive order to remain closed or a day on which the corporate trust office of the property trustee or the indenture trustee is closed for business.

Extension Period. As long as no event of default under the indenture has occurred and is continuing, we have the right to defer the payment of interest on the debentures at any time for a period not exceeding 20 consecutive quarters. We refer to this period of deferral as an "extension period." No extension period may extend beyond , 2031 or end on a date other than an interest payment date, which dates are the same as the distribution dates. If we defer the payment of interest, quarterly distributions on the preferred securities will also be deferred during any such extension period. Any deferred distributions under the preferred securities will accumulate additional amounts at the annual rate of %, compounded quarterly from the relevant distribution date. The term "distributions" as used in this prospectus includes those accumulated amounts.

During an extension period, we may not:

- declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of our capital stock, other than stock dividends, non-cash dividends in connection with the implementation of a shareholder rights plan, purchases of common stock in connection with employee benefit plans or in connection with the reclassification of any class of our capital stock into another class of capital stock, or allow any of our direct or indirect subsidiaries to do the same with respect to their capital stock, other than the payment of dividends or distributions to us or to any of our direct or indirect subsidiaries;
- make, or allow any of our direct or indirect subsidiaries to make, any payment of principal, interest or premium on or repay, repurchase or redeem any debt securities that rank equally with, or junior to, the debentures;
- make, or allow any of our direct or indirect subsidiaries to make, any guarantee payments with respect to any other guarantee by us of any other debt securities of any of our direct or indirect subsidiaries if the guarantee ranks equally with or junior to the debentures, other than payments under the guarantee; or
- redeem, purchase or acquire less than all of the debentures or any of the preferred securities.

After the termination of any extension period and the payment of all amounts due, we may elect to begin a new extension period, subject to the above requirements.

We do not currently intend to exercise our right to defer distributions on the preferred securities by deferring the payment of interest on the debentures.

## REDEMPTION OR EXCHANGE

General. Subject to the prior approval of the Federal Reserve, if required by law or regulation, we will have the right to redeem the debentures:

- in whole at any time, or in part from time to time, on or after , 2006;
- at any time, in whole, within 180 days following the occurrence of a Tax Event, an Investment Company Event or a Capital Treatment Event, which terms we define below; or
- at any time, to the extent of any preferred securities we repurchase, plus a proportionate amount of the common securities we hold.

Mandatory Redemption. Upon our repayment or redemption, in whole or in part, of any debentures, whether on , 2031 or earlier, the property trustee will apply the proceeds to redeem the same amount of the trust securities, upon not less than 30 days' nor more than 60 days' notice, at the redemption price. The redemption price will equal 100% of the aggregate liquidation amount of the trust securities plus accumulated but unpaid distributions to the date of redemption. If less than all of the debentures are to be repaid or redeemed on a date of redemption, then the proceeds from such repayment or redemption will be allocated to redemption of preferred securities and common securities proportionately.

Distribution of Debentures in Exchange for Preferred Securities. Upon prior approval of the Federal Reserve, if required by law or regulation, we will have the right at any time to dissolve, wind-up or terminate First Busey Capital Trust and, after satisfaction of the liabilities of creditors of First Busey Capital Trust as provided by applicable law, including, without limitation, amounts due and owing the trustees of First Busey Capital Trust, cause the debentures to be distributed directly to the holders of trust securities in liquidation of First Busey Capital Trust. See "-- Liquidation Distribution Upon Termination" beginning on page 24.

After the liquidation date fixed for any distribution of debentures in exchange for preferred securities:

- those trust securities will no longer be deemed to be outstanding;
- certificates representing debentures in a principal amount equal to the liquidation amount of those preferred securities will be issued in exchange for the preferred securities certificates;
- we will use our best efforts to designate the debentures for inclusion on Nasdaq or to list them on a national exchange, if the preferred securities are then included or listed;
- any certificates representing trust securities that are not surrendered for exchange will be deemed to represent debentures with a principal amount equal to the liquidation amount of those preferred securities, plus unpaid interest in an amount equal to the accumulated and unpaid distributions on the preferred securities and accruing interest at the rate provided for in the debentures from the last distribution date on the preferred securities; and
- all rights of the trust security holders other than the right to receive debentures upon surrender of a certificate representing trust securities will terminate.

We cannot assure you that the market prices for the preferred securities or the debentures that may be distributed if a dissolution and liquidation of First Busey Capital Trust were to occur would be favorable. The preferred securities that you may purchase, or the debentures that you may receive on dissolution and liquidation of First Busey Capital Trust, may trade at a discount to the price that you paid to purchase the preferred securities.

Redemption upon a Tax Event, Investment Company Event or Capital Treatment Event. If a Tax Event, an Investment Company Event or a Capital Treatment Event occurs, we will have the right to redeem the debentures in whole, but not in part, and thereby cause a mandatory redemption of all of the trust securities at the redemption price. If one of these events occurs and we do not elect to redeem the debentures, or to dissolve First Busey Capital Trust and cause the debentures to be distributed to holders

of the trust securities, then the preferred securities will remain outstanding and additional interest may be payable on the debentures. See "Description of the Debentures -- Redemption" beginning on page 33.

"Tax Event" means the receipt by First Busey Capital Trust and us of an opinion of counsel having a recognized federal tax and securities law practice stating that there is more than an insubstantial risk that:

- interest payable by us on the debentures is not, or within 90 days of the date of the opinion will not be, deductible by us, in whole or in part, for federal income tax purposes;
- First Busey Capital Trust is, or will be within 90 days after the date of the opinion, subject to federal income tax with respect to income received or accrued on the debentures; or
- First Busey Capital Trust is, or will be within 90 days after the date of opinion, subject to more than an immaterial amount of other taxes, duties, assessments or other governmental charges, as a result of any amendment to any tax laws or regulations.

"Investment Company Event" means the receipt by First Busey Capital Trust and us of an opinion of counsel having a recognized federal tax and securities law practice to the effect that First Busey Capital Trust is, or will be, considered an "investment company" that is required to be registered under the Investment Company Act, as a result of a change in law or regulation or a change in interpretation or application of law or regulation. "Capital Treatment Event" means the receipt by First Busey Capital Trust and us of an opinion of counsel having a recognized bank regulatory practice to the effect that there is more than an insubstantial risk of impairment of our ability to treat the preferred securities as Tier 1 capital for purposes of the current capital adequacy guidelines of the Federal Reserve, as a result of any amendment to any laws or any regulations.

For all of the events described above, we or First Busey Capital Trust must request and receive an opinion of counsel experienced in such matters with regard to the event within a reasonable period of time after we become aware of the possible occurrence of an event of this kind.

Redemption of Debentures in Exchange for Preferred Securities We Purchase. Upon prior approval of the Federal Reserve, if required by law or regulation, we will also have the right at any time, and from time to time, to redeem debentures in exchange for any preferred securities we may have repurchased in the market. If we elect to surrender any preferred securities beneficially owned by us in exchange for redemption of a like amount of debentures, we will also surrender a proportionate amount of common securities in exchange for debentures. Neither we nor First Busey Capital Trust will call for redemption any preferred securities owned by other holders at any time when we elect to exchange trust securities we own for debentures.

The common securities we surrender will be in the same proportion to the preferred securities we surrender as is the ratio of common securities then outstanding to the preferred securities then outstanding. In exchange for the trust securities surrendered by us, the property trustee will cause to be released to us for cancellation debentures with a principal amount equal to the liquidation amount of the trust securities, plus any accumulated but unpaid distributions, if any, then held by the property trustee allocable to those trust securities. After the date of redemption involving an exchange by us, the trust securities we surrender will no longer be deemed outstanding and the debentures redeemed in exchange will be cancelled.

#### REDEMPTION PROCEDURES

Preferred securities will be redeemed at the redemption price with the applicable proceeds from our contemporaneous redemption of the debentures. Redemptions of the preferred securities will be made, and the redemption price will be payable, on each redemption date only to the extent that First Busey Capital Trust has funds available for the payment of the redemption price.

Notice of any redemption will be mailed at least 30 days but not more than 60 days before the date of redemption to each holder of trust securities to be redeemed at its registered address. Unless we default in payment of the redemption price on the debentures, interest will cease to accumulate on the debentures called for redemption on and after the date of redemption.

If First Busey Capital Trust gives notice of redemption of its trust securities, then the property trustee, to the extent funds are available, will irrevocably deposit with the depository for the trust securities funds sufficient to pay the aggregate redemption price and will give the depository for the trust securities irrevocable instructions and authority to pay the redemption price to the holders of the trust securities. See "Book-Entry Issuance" beginning on page 39. If the preferred securities are no longer in book-entry only form, the property trustee, to the extent funds are available, will deposit with the designated paying agent for such preferred securities, funds sufficient to pay the aggregate redemption price and will give the paying agent irrevocable instructions and authority to pay the redemption price to the holders upon surrender of their certificates evidencing the preferred securities. Notwithstanding the foregoing, distributions payable on or prior to the date of redemption for any trust securities called for redemption will be payable to the holders of the trust securities on the relevant record dates for the related distribution dates.

If notice of redemption has been given and we have deposited funds as required, then on the date of the deposit all rights of the holders of the trust securities called for redemption will cease, except the right to receive the redemption price, but without interest on such redemption price after the date of redemption. The trust securities will also cease to be outstanding on the date of the deposit. If any date fixed for redemption of trust securities is not a business day, then payment of the redemption price payable on that date will be made on the next day that is a business day without any additional interest or other payment in respect of the delay. However, if the next business day is in the next succeeding calendar year, payment of the interest will be made on the immediately preceding business day.

If payment of the redemption price in respect of trust securities called for redemption is improperly withheld or refused and not paid by First Busey Capital Trust, or by us pursuant to the guarantee, distributions on the trust securities will continue to accumulate at the applicable rate from the date of redemption originally established by First Busey Capital Trust for the trust securities to the date the redemption price is actually paid. In this case, the actual payment date will be considered the date fixed for redemption for purposes of calculating the redemption price. See "Description of the Guarantee" beginning on page 41.

Payment of the redemption price on the preferred securities and any distribution of debentures to holders of preferred securities will be made to the applicable recordholders as they appear on the register for the preferred securities on the relevant record date. As long as the preferred securities are represented by a global security, the record date will be the business day immediately preceding the date of redemption or liquidation date, as applicable.

If less than all of the trust securities are to be redeemed, then the aggregate liquidation amount of the trust securities to be redeemed will be allocated proportionately to those trust securities based upon the relative liquidation amounts. The particular preferred securities to be redeemed will be selected by the property trustee from the outstanding preferred securities not previously called for redemption by a method the property trustee deems fair and appropriate. This method may provide for the redemption of portions equal to \$1,000, or a multiple of \$1,000, of the liquidation amount of the preferred securities. The property trustee will promptly notify the registrar for the preferred securities in writing of the preferred securities selected for redemption and, in the case of any preferred securities selected for partial redemption, the liquidation amount to be redeemed.

Subject to applicable law, and if we are not exercising our right to defer interest payments on the debentures, we may, at any time, purchase outstanding preferred securities.

#### SUBORDINATION OF COMMON SECURITIES

Payment of distributions on, and the redemption price of, the preferred securities and common securities of First Busey Capital Trust will be made based on the liquidation amount of these securities. However, if an event of default under the indenture has occurred and is continuing, no distributions on or redemption of the common securities may be made unless payment in full in cash of all accumulated and unpaid distributions on all of the outstanding preferred securities for all distribution periods terminating on

or before that time, or in the case of payment of the redemption price, payment of the full amount of the redemption price on all of the outstanding preferred securities then called for redemption, has been made or provided for. All funds available to the property trustee will first be applied to the payment in full in cash of all distributions on, or the redemption price of, the preferred securities then due and payable.

In the case of the occurrence and continuance of any event of default under the trust agreement resulting from an event of default under the indenture, we, as holder of the common securities, will be deemed to have waived any right to act with respect to that event of default under the trust agreement until the effect of the event of default has been cured, waived or otherwise eliminated. Until the event of default under the trust agreement has been so cured, waived or otherwise eliminated, the property trustee will act solely on behalf of the holders of the preferred securities and not on our behalf, and only the holders of the preferred securities will have the right to direct the property trustee to act on their behalf.

#### LIQUIDATION DISTRIBUTION UPON TERMINATION

We will have the right at any time to dissolve, wind-up or terminate First Busey Capital Trust and cause the debentures to be distributed to the holders of the preferred securities. This right is subject, however, to us receiving approval of the Federal Reserve, if required by law or regulation.

In addition, First Busey Capital Trust will automatically terminate upon expiration of its term and will terminate earlier on the first to occur of:

- our bankruptcy, dissolution or liquidation;
- the distribution of a like amount of the debentures to the holders of trust securities, if we have given written direction to the property trustee to terminate First Busey Capital Trust;
- redemption of all of the preferred securities as described on page 21 under " -- Redemption or Exchange -- Mandatory Redemption"; or
- the entry of a court order for the dissolution of First Busey Capital Trust.

With the exception of a redemption as described on page 21 under " -- Redemption or Exchange -- Mandatory Redemption," if an early termination of First Busey Capital Trust occurs, the trust will be liquidated by the administrative trustees as expeditiously as they determine to be possible. After satisfaction of liabilities to creditors of First Busey Capital Trust as provided by applicable law, the trustees will distribute to the holders of trust securities, debentures:

- in an aggregate stated principal amount equal to the aggregate stated liquidation amount of the trust securities;
- with an interest rate identical to the distribution rate on the trust securities; and
- with accrued and unpaid interest equal to accumulated and unpaid distributions on the trust securities.

However, if the property trustee determines that the distribution is not practical, then the holders of trust securities will be entitled to receive, instead of debentures, a proportionate amount of the liquidation distribution. The liquidation distribution will be the amount equal to the aggregate of the liquidation amount plus accumulated and unpaid distributions to the date of payment. If the liquidation distribution can be paid only in part because we have insufficient assets available to pay in full the aggregate liquidation distribution, then the amounts payable directly by First Busey Capital Trust on the trust securities will be paid on a proportional basis, based on liquidation amounts, to us, as the holder of the common securities, and to the holders of the preferred securities. However, if an event of default under the indenture has occurred and is continuing, the preferred securities will have a priority over the common securities. See " -- Subordination of Common Securities" on page 23.

Under current federal income tax law and interpretations and assuming that First Busey Capital Trust is treated as a grantor trust, as is expected, a distribution of the debentures should not be a taxable event

to holders of the preferred securities. Should there be a change in law, a change in legal interpretation, a Tax Event or another circumstance, however, the distribution could be a taxable event to holders of the preferred securities. See "Material Federal Income Tax Consequences" beginning on page 45. If we do not elect to redeem the debentures prior to maturity or to liquidate the trust and distribute the debentures to holders of the preferred securities, the preferred securities will remain outstanding until the repayment of the debentures.

If we elect to dissolve First Busey Capital Trust and thus cause the debentures to be distributed to holders of the preferred securities in liquidation of First Busey Capital Trust, we will continue to have the right to shorten the maturity of the debentures. See "Description of the Debentures -- General" beginning on page 31.

#### LIQUIDATION VALUE

The amount of the liquidation distribution payable on the preferred securities in the event of any liquidation of First Busey Capital Trust is \$10 per preferred security plus accumulated and unpaid distributions to the date of payment, which may be in the form of a distribution of debentures having a liquidation value and accrued interest of an equal amount. See "-- Liquidation Distribution Upon Termination" beginning on page 24.

#### EVENTS OF DEFAULT; NOTICE

Any one of the following events constitutes an event of default under the trust agreement with respect to the preferred securities:

- the occurrence of an event of default under the indenture, see "Description of the Debentures -- Debenture Events of Default" beginning on page ;
- a default by First Busey Capital Trust in the payment of any distribution when it becomes due and payable, and continuation of the default for a period of 30 days;
- a default by First Busey Capital Trust in the payment of any redemption price of any of the trust securities when it becomes due and payable;
- a default in the performance, or breach, in any material respect, of any covenant or warranty of the trustees in the trust agreement, other than those defaults covered in the previous two points, and continuation of the default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting trustee(s) by the holders of at least 25% in aggregate liquidation amount of the outstanding preferred securities, a written notice specifying the default or breach and requiring it to be remedied and stating that the notice is a "Notice of Default" under the trust agreement; or
- the occurrence of events of bankruptcy or insolvency with respect to the property trustee and our failure to appoint a successor property trustee within 60 days.

Within five business days after the occurrence of any event of default actually known to the property trustee, the property trustee will transmit notice of the event of default to the holders of the preferred securities, the administrative trustees and to us, unless the event of default has been cured or waived. We and the administrative trustees are required to file annually with the property trustee a certificate as to whether or not we or they are in compliance with all applicable conditions and covenants under the trust agreement.

If an event of default under the indenture has occurred and is continuing, the preferred securities will have preference over the common securities upon termination of First Busey Capital Trust. See "-- Subordination of Common Securities" and "-- Liquidation Distribution Upon Termination" beginning on page 23. The existence of an event of default under the trust agreement does not entitle the holders of preferred securities to accelerate the maturity thereof, unless the event of default is caused by the occurrence

of an event of default under the indenture and both the indenture trustee and holders of at least 25% in principal amount of the debentures fail to accelerate the maturity thereof.

#### REMOVAL OF THE TRUSTEES

Unless an event of default under the indenture has occurred and is continuing, we may remove any trustee at any time. If an event of default under the indenture has occurred and is continuing, only the holders of a majority in liquidation amount of the outstanding preferred securities may remove the property trustee or the Delaware trustee. The holders of the preferred securities have no right to vote to appoint, remove or replace the trustees. These rights are vested exclusively with us as the holder of the common securities. No resignation or removal of a trustee and no appointment of a successor trustee will be effective until the successor trustee accepts the appointment in accordance with the trust agreement.

#### CO-TRUSTEES AND SEPARATE PROPERTY TRUSTEE

Unless an event of default under the indenture has occurred and is continuing, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the property of First Busey Capital Trust may at the time be located, we will have the power to appoint at any time or times, and upon written request of the property trustee will appoint, one or more persons or entities either (1) to act as a co-trustee, jointly with the property trustee, of all or any part of the property of First Busey Capital Trust, or (2) to act as separate trustee of any property of First Busey Capital Trust. In either case, these trustees will have the powers that may be provided in the instrument of appointment, and will have vested in them any property, title, right or power deemed necessary or desirable, subject to the provisions of the trust agreement. In case an event of default under the indenture has occurred and is continuing, the property trustee alone will have power to make the appointment.

#### MERGER OR CONSOLIDATION OF TRUSTEES

Generally, any person or successor to any of the trustees may be a successor trustee to any of the trustees, including a successor resulting from a merger or consolidation. However, any successor trustee must meet all of the qualifications and eligibility standards to act as a trustee.

#### MERGERS, CONSOLIDATIONS, AMALGAMATIONS OR REPLACEMENTS OF FIRST BUSEY CAPITAL TRUST

First Busey Capital Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other person, except as described below. For these purposes, if we consolidate or merge with another entity, or transfer or sell substantially all of our assets to another entity, in some cases that transaction may be considered to involve a replacement of First Busey Capital Trust, and the conditions set forth below would apply to such transaction. First Busey Capital Trust may, at our request, with the consent of the administrative trustees and without the consent of the holders of the preferred securities, the property trustee or the Delaware trustee, undertake a transaction listed above if the following conditions are met:

- the successor entity either (1) expressly assumes all of the obligations of First Busey Capital Trust with respect to the preferred securities, or (2) substitutes for the preferred securities other securities having substantially the same terms as the preferred securities, referred to as "successor securities," so long as the successor securities rank the same in priority as the preferred securities with respect to distributions and payments upon liquidation, redemption and otherwise;
- we appoint a trustee of the successor entity possessing substantially the same powers and duties as the property trustee in its capacity as the holder of the debentures;
- the successor securities are listed or traded or will be listed or traded on any national securities exchange or other organization on which the preferred securities are then listed, if any;

- the merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the preferred securities, including any successor securities, in any material respect;
- the successor entity has a purpose substantially identical to that of First Busey Capital Trust;
- prior to the merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, we have received an opinion from independent counsel that (1) any transaction of this kind does not adversely affect the rights, preferences and privileges of the holders of the preferred securities, including any successor securities, in any material respect, and (2) following the transaction, neither First Busey Capital Trust nor the successor entity will be required to register as an "investment company" under the Investment Company Act; and
- we own all of the common securities of the successor entity and guarantee the obligations of the successor entity under the successor securities at least to the extent provided by the guarantee, the debentures, the trust agreement and the expense agreement.

Notwithstanding the foregoing, First Busey Capital Trust may not, except with the consent of every holder of the preferred securities, enter into any transaction of this kind if the transaction would cause First Busey Capital Trust or the successor entity not to be classified as a grantor trust for federal income tax purposes.

#### VOTING RIGHTS; AMENDMENT OF TRUST AGREEMENT

Except as described below and under "Description of the Guarantee -- Amendments and Assignment" on page 42, and as otherwise required by the Trust Indenture Act and the trust agreement, the holders of the preferred securities will have no voting rights.

The trust agreement may be amended from time to time by us, as holders of the common securities, and the trustees, without the consent of the holders of the preferred securities, in the following circumstances:

- with respect to acceptance of appointment by a successor trustee;
- to cure any ambiguity, correct or supplement any provisions in the trust agreement that may be inconsistent with any other provision, or to make any other provisions with respect to matters or questions arising under the trust agreement, as long as the amendment is not inconsistent with the other provisions of the trust agreement and does not have a material adverse effect on the interests of any holder of trust securities; or
- to modify, eliminate or add to any provisions of the trust agreement if necessary to ensure that First Busey Capital Trust will be classified for federal income tax purposes as a grantor trust at all times that any trust securities are outstanding or to ensure that First Busey Capital Trust will not be required to register as an "investment company" under the Investment Company Act.

With the consent of the holders of a majority of the aggregate liquidation amount of the outstanding trust securities, we and the trustees may amend the trust agreement if the trustees receive an opinion of counsel to the effect that the amendment or the exercise of any power granted to the trustees in accordance with the amendment will not affect First Busey Capital Trust's status as a grantor trust for federal income tax purposes or First Busey Capital Trust's exemption from status as an "investment company" under the Investment Company Act. However, without the consent of each holder of trust securities, the trust agreement may not be amended to (1) change the amount or timing of any distribution on the trust securities or otherwise adversely affect the amount of any distribution required to be made in respect of the trust securities as of a specified date, or (2) restrict the right of a holder of trust securities to institute suit for the enforcement of the payment on or after that date.



As long as the property trustee holds any debentures, the trustees will not, without obtaining the prior approval of the holders of a majority in aggregate liquidation amount of all outstanding preferred securities:

- direct the time, method and place of conducting any proceeding for any remedy available to the indenture trustee, or executing any trust or power conferred on the property trustee with respect to the debentures;
- waive any past default that is waivable under the indenture;
- exercise any right to rescind or annul a declaration that the principal of all the debentures will be due and payable; or
- consent to any amendment or termination of the indenture or the debentures, where the property trustee's consent is required. However, where a consent under the Indenture requires the consent of each holder of the affected debentures, no consent will be given by the property trustee without the prior consent of each holder of the preferred securities.

The trustees may not revoke any action previously authorized or approved by a vote of the holders of the preferred securities except by subsequent vote of the holders of the preferred securities. The property trustee will notify each holder of preferred securities of any notice of default with respect to the debentures. In addition to obtaining the foregoing approvals of the holders of the preferred securities, prior to taking any of the foregoing actions, the trustees must obtain an opinion of counsel experienced in these matters to the effect that First Busey Capital Trust will not be classified as an association taxable as a corporation for federal income tax purposes on account of the action.

Any required approval of holders of trust securities may be given at a meeting or by written consent. The property trustee will cause a notice of any meeting at which holders of the trust securities are entitled to vote, or of any matter upon which action by written consent of the holders is to be taken, to be given to each holder of record of trust securities.

No vote or consent of the holders of preferred securities will be required for First Busey Capital Trust to redeem and cancel its preferred securities in accordance with the trust agreement.

Notwithstanding the fact that holders of preferred securities are entitled to vote or consent under any of the circumstances described above, any of the preferred securities that are owned by us, the trustees or any of our affiliates or any trustee, will, for purposes of the vote or consent, be treated as if they were not outstanding.

#### GLOBAL PREFERRED SECURITIES

The preferred securities will be represented by one or more global preferred securities registered in the name of The Depository Trust Company, New York, New York, or its nominee. A global preferred security is a security representing interests of more than one beneficial holder. Ownership of beneficial interests in the global preferred securities will be reflected in DTC participant account records through DTC's book-entry transfer and registration system. Participants are brokers, dealers, or others having accounts with DTC. Indirect beneficial interests of other persons investing in the preferred securities will be shown on, and transfers will be effected only through, records maintained by DTC participants. Except as described below, preferred securities in definitive form will not be issued in exchange for the global preferred securities. See "Book-Entry Issuance" beginning on page 39.

No global preferred security may be exchanged for preferred securities registered in the names of persons other than DTC or its nominee unless:

- DTC notifies the indenture trustee that it is unwilling or unable to continue as a depository for the global preferred security and we are unable to locate a qualified successor depository;
- we execute and deliver to the indenture trustee a written order stating that we elect to terminate the book-entry system through DTC; or
- there shall have occurred and be continuing an event of default under the indenture.

Any global preferred security that is exchangeable pursuant to the preceding sentence shall be exchangeable for definitive certificates registered in the names as DTC shall direct. It is expected that the instructions will be based upon directions received by DTC with respect to ownership of beneficial interests in the global preferred security. If preferred securities are issued in definitive form, the preferred securities will be in denominations of \$1,000, and multiples of \$1,000, and may be transferred or exchanged at the offices described below.

Unless and until it is exchanged in whole or in part for the individual preferred securities represented thereby, a global preferred security 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 nominee to a successor depository or any nominee of the successor.

Payments on global preferred securities will be made to DTC, as the depository for the global preferred securities. If the preferred securities are issued in definitive form, distributions will be payable by check mailed to the address of record of the persons entitled to the distribution, and the transfer of the preferred securities will be registrable, and preferred securities will be exchangeable for preferred securities of other denominations of a like aggregate liquidation amount, at the corporate office of the property trustee, or at the offices of any paying agent or transfer agent appointed by the administrative trustees. In addition, if the preferred securities are issued in definitive form, the record dates for payment of distributions will be the 15th day of the month in which the relevant distribution date occurs. For a description of the terms of DTC arrangements relating to payments, transfers, voting rights, redemptions and other notices and other matters, see "Book-Entry Issuance" beginning on page .

Upon the issuance of one or more global preferred securities, and the deposit of the global preferred security with or on behalf of DTC or its nominee, DTC or its nominee will credit, on its book-entry registration and transfer system, the respective aggregate liquidation amounts of the individual preferred securities represented by the global preferred security to the designated accounts of persons that participate in the DTC system. These participant accounts will be designated by the dealers, underwriters or agents selling the preferred securities. Ownership of beneficial interests in a global preferred security will be limited to persons or entities having an account with DTC or who may hold interests through participants. With respect to interests of any person or entity that is a DTC participant, ownership of beneficial interests in a global preferred security will be shown on, and the transfer of that ownership will be effected only through, records maintained by DTC or its nominee. With respect to persons or entities who hold interests in a global preferred security through a participant, the interest and any transfer of the interest will be shown only on the participant's records. The laws of some states require that certain purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global preferred security.

So long as DTC or another depository, or its nominee, is the registered owner of the global preferred security, the depository or the nominee, as the case may be, will be considered the sole owner or holder of the preferred securities represented by the global preferred security for all purposes under the trust agreement. Except as described in this prospectus, owners of beneficial interests in a global preferred security will not be entitled to have any of the individual preferred securities represented by the global preferred security registered in their names, will not receive or be entitled to receive physical delivery of any of the preferred securities in definitive form and will not be considered the owners or holders of the preferred securities under the trust agreement.

None of us, the property trustee, any paying agent or the securities registrar for the preferred securities will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of the global preferred security representing the preferred securities or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

We expect that DTC or its nominee, upon receipt of any payment of the liquidation amount or distributions in respect of a global preferred security, immediately will credit participants' accounts with payments in amounts proportionate to their respective beneficial interest in the aggregate liquidation amount of the global preferred security as shown on the records of DTC or its nominee. We also expect that payments by participants to owners of beneficial interests in the global preferred security held through the participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name." The payments will be the responsibility of the participants. See "Book-Entry Issuance" beginning on page 39.

#### PAYMENT AND PAYING AGENCY

Payments in respect of the preferred securities shall be made to DTC, which shall credit the relevant accounts of participants on the applicable distribution dates, or, if any of the preferred securities are not held by DTC, the payments shall be made by check mailed to the address of the holder as listed on the register of holders of the preferred securities. The paying agent for the preferred securities will initially be the property trustee and any co-paying agent chosen by the property trustee and acceptable to us and the administrative trustees. The paying agent for the preferred securities may resign as paying agent upon 30 days' written notice to the administrative trustees, the property trustee and us. If the property trustee no longer is the paying agent for the preferred securities, the administrative trustees will appoint a successor to act as paying agent. The successor must be a bank or trust company acceptable to us and the property trustee.

#### REGISTRAR AND TRANSFER AGENT

The property trustee will act as the registrar and the transfer agent for the preferred securities. Registration of transfers of preferred securities will be effected without charge by or on behalf of First Busey Capital Trust, but upon payment of any tax or other governmental charges that may be imposed in connection with any transfer or exchange. First Busey Capital Trust and its registrar and transfer agent will not be required to register or cause to be registered the transfer of preferred securities after they have been called for redemption.

#### INFORMATION CONCERNING THE PROPERTY TRUSTEE

The property trustee undertakes to perform only the duties set forth in the trust agreement and as required by the Trust Indenture Act. After the occurrence of an event of default that is continuing, the property trustee must exercise the same degree of care and skill as a prudent person exercises or uses in the conduct of his or her own affairs. The property trustee is under no obligation to exercise any of the powers vested in it by the trust agreement at the request of any holder of preferred securities unless it is offered reasonable indemnity against the costs, expenses and liabilities that might be incurred. If no event of default under the trust agreement has occurred and is continuing and the property trustee is required to decide between alternative causes of action, construe ambiguous or inconsistent provisions in the trust agreement or is unsure of the application of any provision of the trust agreement, and the matter is not one on which holders of preferred securities are entitled to vote, then the property trustee will take the action directed in writing by us. If the property trustee is not so directed, then it will take the action it deems advisable and in the best interests of the holders of the trust securities and will have no liability except for its own bad faith, negligence or willful misconduct.

#### MISCELLANEOUS

The administrative trustees are authorized and directed to conduct the affairs of and to operate First Busey Capital Trust in such a way that:

- First Busey Capital Trust will not be deemed to be an "investment company" required to be registered under Investment Company Act;

- First Busey Capital Trust will not be classified as an association taxable as a corporation for federal income tax purposes; and
- the debentures will be treated as indebtedness incurred by us for federal income tax purposes.

In this regard, we and the administrative trustees are authorized to take any action not inconsistent with applicable law, the certificate of trust or the necessary or desirable for these purposes.

Holders of the preferred securities have no preemptive or similar rights. The trust agreement and the trust securities will be governed by Delaware law.

#### DESCRIPTION OF THE DEBENTURES

Concurrently with the issuance of the preferred securities, First Busey Capital Trust will invest the proceeds from the sale of the trust securities in the debentures issued by us. The debentures will be issued as unsecured debt under the indenture between us and Wilmington Trust Company, as indenture trustee. The indenture will be qualified under the Trust Indenture Act.

The following discussion contains a description of the material provisions of the debentures and is subject to, and is qualified in its entirety by reference to, the indenture and to the Trust Indenture Act. We urge prospective investors to read the form of the indenture, which is filed as an exhibit to the registration statement of which this prospectus forms a part.

#### GENERAL

The debentures will be limited in aggregate principal amount to \$20,618,560, or \$23,711,340 if the underwriters' over-allotment option is exercised in full. This amount represents the sum of the aggregate stated liquidation amounts of the trust securities. The debentures will bear interest at the annual rate of % of the principal amount. The interest will be payable quarterly on March 30, June 30, September 30 and December 30 of each year, beginning September 30, 2001, to the person in whose name each debenture is registered at the close of business on the 15th day of the month in which the relevant distribution occurs. It is anticipated that, until the liquidation, if any, of the trust, the debentures will be held in the name of the property trustee in trust for the benefit of the holders of the trust securities.

The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months. If any date on which interest is payable on the debentures is not a business day, then payment of interest will be made on the next day that is a business day without any additional interest or other payment in respect of the delay. However, if the next business day is in the next calendar year, payment of interest will be made on the immediately preceding business day. Accrued interest that is not paid on the applicable interest payment date will bear additional interest on the amount due at the annual rate of %, compounded quarterly.

The debentures will mature on , 2031, the stated maturity date. We may shorten this date once at any time to any date after , 2006, subject to the prior approval of the Federal Reserve, if required by law or regulation.

We will give notice to the indenture trustee and the holders of the debentures, no more than 180 days and no less than 30 days prior to the effectiveness of any change in the stated maturity date. We will not have the right to redeem the debentures from First Busey Capital Trust until after , 2006, except if (1) a Tax Event, an Investment Company Event or a Capital Treatment Event, which terms are defined on pages , has occurred, or (2) we repurchase preferred securities in the market, in which case we can elect to redeem debentures specifically in exchange for a like amount of preferred securities owned by us plus a proportionate amount of common securities.

The debentures will be unsecured and will rank junior to all of our senior and subordinated debt, including indebtedness we may incur in the future. Because we are a holding company, our right to participate in any distribution of assets of any of our subsidiaries, upon any subsidiary's liquidation or

reorganization or otherwise, and thus the ability of holders of the debentures to benefit indirectly from any distribution by a subsidiary, is subject to the prior claim of creditors of the subsidiary, except to the extent that we may be recognized as a creditor of the subsidiary. The debentures will, therefore, be effectively subordinated to all existing and future liabilities of our subsidiaries, and holders of debentures should look only to our assets for payment. The indenture does not limit our ability to incur or issue secured or unsecured senior and junior debt. See " -- Subordination" beginning on page 34.

The indenture does not contain provisions that afford holders of the debentures protection in the event of a highly leveraged transaction or other similar transaction involving us, nor does it require us to maintain or achieve any financial performance levels or to obtain or maintain any credit rating on the debentures.

#### OPTION TO EXTEND INTEREST PAYMENT PERIOD

As long as no event of default under the indenture has occurred and is continuing, we have the right under the indenture to defer the payment of interest on the debentures at any time for a period not exceeding 20 consecutive quarters. However, no extension period may extend beyond the stated maturity of the debentures or end on a date other than a date interest is normally due. At the end of an extension period, we must pay all interest then accrued and unpaid, together with interest thereon at the annual rate of %, compounded quarterly. During an extension period, interest will continue to accrue and holders of debentures, or the holders of preferred securities if they are then outstanding, will be required to accrue and recognize as income for federal income tax purposes the accrued but unpaid interest amounts in the year in which such amounts accrued. See "Material Federal Income Tax Consequences" beginning on page 45.

During an extension period, we may not:

- declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of our capital stock, other than stock dividends, non-cash dividends in connection with the implementation of a stockholders' rights plan, purchases of common stock in connection with employee benefit plans or in connection with the reclassification of any class of capital stock into another class of capital stock, or allow any of our direct or indirect subsidiaries to do the same with respect to their capital stock, other than payment of dividends or distributions to us or to any of our direct or indirect subsidiaries;
- make, or allow any of our direct or indirect subsidiaries to make, any payment of principal, interest or premium on, or repay, repurchase or redeem any debt securities issued by us that rank equally with or junior to the debentures;
- make, or allow any of our direct or indirect subsidiaries to make, any guarantee payments with respect to any other guarantee by us of any other debt securities of any of our direct or indirect subsidiaries if the guarantee ranks equally with or junior to the debentures, other than payments under the guarantee; or
- redeem, purchase or acquire less than all of the debentures or any of the preferred securities.

Prior to the termination of any extension period, so long as no event of default under the indenture is continuing, we may further defer the payment of interest subject to the above stated requirements. Upon the termination of any extension period and the payment of all amounts then due, we may elect to begin a new extension period at any time. We do not currently intend to exercise our right to defer payments of interest on the debentures.

We must give the property trustee, the administrative trustees and the indenture trustee notice of our election of an extension period at least two business days prior to the earlier of (1) the next date on which distributions on the trust securities would have been payable except for the election to begin an extension period, or (2) the date we are required to give notice of the record date, or the date the distributions are

payable, to Nasdaq, or other applicable exchange of self-regulatory organization, or to holders of the preferred securities, but in any event at least one business day prior to the record date.

Other than as described above, there is no limitation on the number of times that we may elect to begin an extension period.

#### ADDITIONAL SUMS TO BE PAID AS A RESULT OF ADDITIONAL TAXES

If First Busey Capital Trust is required to pay any additional taxes, duties, assessments or other governmental charges as a result of the occurrence of a Tax Event, we will pay as additional interest on the debentures any amounts which may be required so that the net amounts received and retained by First Busey Capital Trust after paying any additional taxes, duties, assessments or other governmental charges will not be less than the amounts First Busey Capital Trust would have received had the additional taxes, duties, assessments or other governmental charges not been imposed.

#### REDEMPTION

Subject to prior approval of the Federal Reserve, if required by law or regulation, we may redeem the debentures prior to maturity:

- on or after \_\_\_\_\_, 2006, in whole at any time or in part from time to time;
- in whole at any time within 180 days following the occurrence of a Tax Event, an Investment Company Event or a Capital Treatment Event; or
- at any time to the extent of any preferred securities we purchase, plus a proportionate amount of the common securities we hold.

In each case we will pay a redemption price equal to the accrued and unpaid interest on the debentures so redeemed to the date fixed for redemption, plus 100% of the principal amount of the redeemed debentures.

Notice of any redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of debentures to be redeemed at its registered address. Redemption of less than all outstanding debentures must be effected proportionately, by lot or in any other manner deemed to be fair and appropriate by the indenture trustee. Unless we default in payment of the redemption price for the debentures, on and after the redemption date interest will no longer accrue on the debentures or the portions of the debentures called for redemption.

The debentures will not be subject to any sinking fund.

#### DISTRIBUTION UPON LIQUIDATION

As described on page 24 under "Description of the Preferred Securities -- Liquidation Distribution Upon Termination," under certain circumstances and with the Federal Reserve's approval, the debentures may be distributed to the holders of the preferred securities in liquidation of First Busey Capital Trust after satisfaction of liabilities to creditors of First Busey Capital Trust. If this occurs, we will use our best efforts to designate the debentures for inclusion on Nasdaq or to list them on a national exchange, if the preferred securities are then included or listed. There can be no assurance as to the market price of any debentures that may be distributed to the holders of preferred securities.

#### RESTRICTIONS ON PAYMENTS

We are restricted from making certain payments (as described below) if we have chosen to defer payment of interest on the debentures, if an event of default has occurred and is continuing under the indenture, or if we are in default with respect to our obligations under the guarantee.

If any of these events occur, we may not:

- declare or pay any dividends or distributions on, or redeem, purchase, acquire, or make a liquidation payment with respect to, any of our capital stock, other than stock dividends, non-cash dividends in connection with the implementation of a stockholders' rights plan, purchases of common stock in connection with employee benefit plans or in connection with the reclassification of any class of our capital stock into another class of capital stock, or allow any of our direct or indirect subsidiaries to do the same with respect to their capital stock, other than payment of dividends or distributions to us or to any of our direct or indirect subsidiaries;
- make, or allow any of our direct or indirect subsidiaries to make, any payment of principal, interest or premium on, or repay or repurchase or redeem any of our debt securities that rank equally with or junior to the debentures;
- make, or allow any of our direct or indirect subsidiaries to make, any guarantee payments with respect to any guarantee by us of the debt securities of any of our direct or indirect subsidiaries if the guarantee ranks equally with or junior to the debentures, other than payments under the guarantee; or
- redeem, purchase or acquire less than all of the debentures or any of the preferred securities.

#### SUBORDINATION

The debentures are subordinated and junior in right of payment to all of our senior and subordinated debt, as defined below. Upon any payment or distribution of assets to creditors upon any liquidation, dissolution, winding up or reorganization of our company, whether voluntary or involuntary in bankruptcy, insolvency, receivership or other proceedings in connection with any insolvency or bankruptcy proceedings, the holders of our senior and subordinated debt will first be entitled to receive payment in full of principal and interest before the holders of debentures will be entitled to receive or retain any payment in respect of the debentures.

If the maturity of any debentures is accelerated, the holders of all of our senior and subordinated debt outstanding at the time of the acceleration will also be entitled to first receive payment in full of all amounts due to them, including any amounts due upon acceleration, before the holders of the debentures will be entitled to receive or retain any principal or interest payments on the debentures.

No payments of principal or interest on the debentures may be made if there has occurred and is continuing a default in any payment with respect to any of our senior or subordinated debt or an event of default with respect to any of our senior or subordinated debt resulting in the acceleration of the maturity of the senior or subordinated debt, or if any judicial proceeding is pending with respect to any default.

The term "debt" means, with respect to any person, whether recourse is to all, or a portion, of the assets of the person and whether or not contingent:

- every obligation of the person for money borrowed;
- every obligation of the person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses;
- every reimbursement obligation of the person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of the person;
- every obligation of the person issued or assumed as the deferred purchase price of property or services, excluding trade accounts payable or accrued liabilities arising in the ordinary course of business;
- every capital lease obligation of the person; and

- every obligation of the type referred to in the first five points of another person and all dividends of another person the payment of which, in either case, the first person has guaranteed or is responsible or liable, directly or indirectly, as obligor or otherwise.

The term "senior debt" means the principal of, and premium and interest, including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to us, on, debt, whether incurred on or prior to the date of the indenture or incurred after such date. However, senior debt will not be deemed to include:

- any debt where it is provided in the instrument creating the debt that the obligations are not superior in right of payment to the debentures or to other debt which is equal with, or subordinated to, the debentures;
- any of our debt that when incurred and without regard to any election under the federal bankruptcy laws, was without recourse to us;
- any debt of ours to any of our non-bank subsidiaries;
- any debt to any of our employees;
- any debt that by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of the debt by the holders of the debentures as a result of the subordination provisions of the indenture would be greater than they otherwise would have been as a result of any obligation of the holders to pay amounts over to the obligees on the trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which the debt is subject; and
- debt which constitutes subordinated debt.

The term "subordinated debt" means the principal of, and premium and interest, including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to us, on, debt. Subordinated debt includes debt incurred on or prior to the date of the indenture or thereafter incurred, which is by its terms expressly provided to be junior and subordinate to other debt of ours, other than the debentures. However, subordinated debt will not be deemed to include:

- any of our debt that when incurred and without regard to any election under the federal bankruptcy laws was without recourse to us;
- any debt of ours to any of our subsidiaries;
- any debt to any of our employees;
- any debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of the debt by the holders of the debentures as a result of the subordination provisions of the indenture would be greater than they otherwise would have been as a result of any obligation of the holders to pay amounts over to the obligees on the trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which the debt is subject;
- debt which constitutes senior debt; and
- any debt of ours under debt securities (and guarantees in respect of these debt securities) initially issued to any trust, or a trustee of a trust, partnership or other entity affiliated with us that is, directly or indirectly, our finance subsidiary in connection with the issuance by that entity of preferred securities or other securities which are intended to qualify for Tier 1 capital treatment.

We expect from time to time to incur additional indebtedness, and there is no limitation under the indenture on the amount of indebtedness we may incur. We had consolidated senior debt of approximately \$73.0 million outstanding principal amount at March 31, 2001. Although we expect to repay



approximately \$18.9 million of our short-term borrowings from the sale of the debentures, we expect to incur additional senior or subordinated debt in the future.

#### PAYMENT AND PAYING AGENTS

Generally, payment of principal of and interest on the debentures will be made at the office of the indenture trustee in Wilmington, Delaware. However, we have the option to make payment of any interest by (1) check mailed to the address of the person entitled to payment at the address listed in the register of holders of the debentures, or (2) wire transfer to an account maintained by the person entitled thereto as specified in the register of holders of the debentures, if proper transfer instructions have been received by the applicable record date. Payment of any interest on debentures will be made to the person in whose name the debenture is registered at the close of business on the regular record date for the interest payment, except in the case of defaulted interest.

Any moneys deposited with the indenture trustee or any paying agent for the debentures, or then held by us in trust, for the payment of the principal of or interest on the debentures and remaining unclaimed for two years after the principal or interest has become due and payable, will be repaid to us on June 30 of each year. If we hold any of this money in trust, then it will be discharged from First Busey Capital Trust to us and the holder of the debenture will thereafter look, as a general unsecured creditor, only to us for payment.

#### REGISTRAR AND TRANSFER AGENT

The indenture trustee will act as the registrar and the transfer agent for the debentures. Debentures may be presented for registration of transfer, with the form of transfer endorsed thereon, or a satisfactory written instrument of transfer, duly executed, at the office of the registrar. Provided that we maintain a transfer agent in Wilmington, Delaware or New York, New York, we may rescind the designation of any transfer agent or approve a change in the location through which any transfer agent acts. We may at any time designate additional transfer agents with respect to the debentures.

If we redeem any of the debentures, neither we nor the indenture trustee will be required to (1) issue, register the transfer of or exchange any debentures during a period beginning at the opening of business 15 days before the day of the mailing of and ending at the close of business on the day of the mailing of the relevant notice of redemption, or (2) transfer or exchange any debentures so selected for redemption, except, in the case of any debentures being redeemed in part, any portion not to be redeemed.

#### MODIFICATION OF INDENTURE

We and the indenture trustee may, from time to time without the consent of the holders of the debentures, amend, waive our rights under or supplement the indenture for purposes which do not materially adversely affect the rights of the holders of the debentures. Other changes may be made by us and the indenture trustee with the consent of the holders of a majority in total principal amount of the outstanding debentures. However, without the consent of the holder of each outstanding debenture affected by the proposed modification, no modification may:

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

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

## DEBENTURE EVENTS OF DEFAULT

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

- our failure to pay any interest on the debentures for 30 days after the due date, except where we have properly extended the interest payment;
- our failure to pay any principal on the debentures when due whether at maturity, upon redemption or otherwise;
- our failure to observe or perform in any material respect any other covenants or agreements contained in the indenture for 90 days after written notice to us from the indenture trustee or the holders of at least 25% in aggregate outstanding principal amount of the debentures; or
- our bankruptcy, insolvency or reorganization or dissolution of First Busey Capital Trust (except for certain transactions specifically permitted by the trust agreement).

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

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

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

## ENFORCEMENT OF CERTAIN RIGHTS BY HOLDERS OF THE PREFERRED SECURITIES

If an event of default under the indenture has occurred and is continuing and the event is attributable to the failure by us to pay interest on or principal of the debentures on the date on which the payment is due and payable, then a holder of preferred securities may institute a direct action against us to compel us to make the payment. We may not amend the indenture to remove the foregoing right to bring a direct action without the prior written consent of all of the holders of the preferred securities. If the right to bring a direct action is removed, First Busey Capital Trust may become subject to the reporting obligations under the Exchange Act.

The holders of the preferred securities will not be able to exercise directly any remedies, other than those set forth in the preceding paragraph, available to the holders of the debentures unless there has been an event of default under the trust agreement. See "Description of the Preferred Securities -- Events of Default; Notice" on page 25.

## CONSOLIDATION, MERGER, SALE OF ASSETS AND OTHER TRANSACTIONS

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

or sell, convey, transfer or otherwise dispose of its properties and assets substantially as an entirety to us, unless:

- if we consolidate with or merge into another person or convey or transfer our properties and assets substantially as an entirety to any person, the successor person is organized under the laws of the United States or any state or the District of Columbia, and the successor person expressly assumes by supplemental indenture our obligations on the debentures;
- immediately after the transaction, no event of default under the indenture, and no event which, after notice or lapse of time, or both, would become an event of default under the indenture, has occurred and is continuing; and
- certain other conditions as prescribed in the indenture are satisfied.

Under certain circumstances, if we consolidate or merge with another entity, or transfer or sell substantially all of our assets to another entity, such transaction may be considered to involve a replacement of First Busey Capital Trust, and the provisions of the trust agreement relating to a replacement of First Busey Capital Trust would apply to such transaction. See "Description of the Preferred Securities -- Mergers, Consolidations, Amalgamations or Replacements of First Busey Capital Trust" beginning on page 26.

#### SATISFACTION AND DISCHARGE

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

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

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

#### GOVERNING LAW

The indenture and the debentures will be governed by and construed in accordance with Illinois law.

#### INFORMATION CONCERNING THE INDENTURE TRUSTEE

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

## MISCELLANEOUS

We have agreed, pursuant to the indenture, for so long as preferred securities remain outstanding:

- to maintain directly or indirectly 100% ownership of the common securities of First Busey Capital Trust, except that certain successors that are permitted pursuant to the indenture may succeed to our ownership of the common securities;
- not to voluntarily terminate, wind up or liquidate First Busey Capital Trust without prior approval of the Federal Reserve, if required by law or regulation;
- to use our reasonable efforts to cause First Busey Capital Trust (1) to remain a business trust, and to avoid involuntary termination, winding up or liquidation, except in connection with a distribution of debentures, the redemption of all of the trust securities or mergers, consolidations or amalgamations, each as permitted by the trust agreement, and (2) to otherwise continue not to be treated as an association taxable as a corporation or a partnership for federal income tax purposes;
- to use our reasonable efforts to cause each holder of trust securities to be treated as owning an individual beneficial interest in the debentures;
- to use our reasonable efforts to maintain the eligibility of the preferred securities for quotation or listing on any national securities exchange or other organization for as long as the preferred securities are outstanding; and
- not to issue directly or indirectly additional trust preferred securities that are senior in right of payment to the preferred securities.

## BOOK-ENTRY ISSUANCE

## GENERAL

DTC will act as securities depository for the preferred securities and may act as securities depository for all of the debentures in the event of the distribution of the debentures to the holders of preferred securities. Except as described below, the preferred securities will be issued only as registered securities in the name of Cede & Co., as DTC's nominee. One or more global preferred securities will be issued for the preferred securities and will be deposited with DTC.

DTC is a limited purpose trust company organized under New York banking law, a "banking organization" within the meaning of the New York banking law, a member of the Federal Reserve, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to Section 17A of the Exchange Act. DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is owned by a number of its direct participants and by the New York Stock Exchange, the American Stock Exchange and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to indirect participants, such as securities brokers and dealers, banks and trust companies that clear through or maintain custodial relationships with direct participants, either directly or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

Purchases of preferred securities within the DTC system must be made by or through direct participants, which will receive a credit for the preferred securities on the DTC's records. The ownership interest of each actual purchaser of each preferred security is in turn to be recorded on the direct and indirect participants' records. These beneficial owners will not receive written confirmation from DTC of their purchases, but beneficial owners are expected to receive written confirmations providing details of the transactions, as well as periodic statements of their holdings, from the direct or indirect participants

through which the beneficial owners purchased preferred securities. Transfers of ownership interests in the preferred securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interest in preferred securities, except if use of the book-entry-only system for the preferred securities is discontinued.

DTC will have no knowledge of the actual beneficial owners of the preferred securities; DTC's records reflect only the identity of the direct participants to whose accounts the preferred securities are credited, which may or may not be the beneficial owners. The participants will remain responsible for keeping account of their holdings on behalf of their customers.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that we believe to be accurate, but we and First Busey Capital Trust assume no responsibility for the accuracy thereof. Neither we nor First Busey Capital Trust have any responsibility for the performance by DTC or its participants of their respective obligations as described in this prospectus or under the rules and procedures governing their respective operations.

#### NOTICES AND VOTING

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct and indirect participants to beneficial owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices will be sent to Cede & Co. as the registered holder of the preferred securities. If less than all of the preferred securities are being redeemed, the amount to be redeemed will be determined in accordance with the trust agreement.

Although voting with respect to the preferred securities is limited to the holders of record of the preferred securities, in those instances in which a vote is required, neither DTC nor Cede & Co. will itself consent or vote with respect to preferred securities. Under its usual procedures, DTC would mail an omnibus proxy to the property trustee as soon as possible after the record date. The omnibus proxy assigns Cede & Co.'s consenting or voting rights to those direct participants to whose accounts the preferred securities are credited on the record date.

#### DISTRIBUTION OF FUNDS

The property trustee will make distributions on the preferred securities to DTC. DTC's practice is to credit direct participants' accounts on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payments on the payment date. Payments by participants to beneficial owners will be governed by standing instructions and customary practices and will be the responsibility of the participant and not of DTC, the property trustee, First Busey Capital Trust or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of distributions to DTC is the responsibility of the property trustee, disbursement of the payments to direct participants is the responsibility of DTC, and disbursements of the payments to the beneficial owners is the responsibility of direct and indirect participants.

#### SUCCESSOR DEPOSITARIES AND TERMINATION OF BOOK-ENTRY SYSTEM

DTC may discontinue providing its services with respect to any of the preferred securities at any time by giving reasonable notice to the property trustee or us. If no successor securities depository is obtained, definitive certificates representing the preferred securities are required to be printed and delivered. We also have the option to discontinue use of the system of book-entry transfers through DTC, or a successor depository. After an event of default under the indenture, the holders of a majority in liquidation amount of preferred securities may determine to discontinue the system of book-entry transfers through DTC. In these events, definitive certificates for the preferred securities will be printed and delivered.

## DESCRIPTION OF THE GUARANTEE

The preferred securities guarantee agreement will be executed and delivered by us concurrently with the issuance of the preferred securities for the benefit of the holders of the preferred securities. The guarantee agreement will be qualified as an indenture under the Trust Indenture Act. Wilmington Trust Company, the guarantee trustee, will act as trustee for purposes of complying with the provisions of the Trust Indenture Act, and will also hold the guarantee for the benefit of the holders of the preferred securities.

The following discussion contains a description of the material provisions of the guarantee and is subject to, and is qualified in its entirety by reference to, the guarantee agreement and to the Trust Indenture Act. We urge prospective investors to read the form of the guarantee agreement, which is filed as an exhibit to the registration statement of which this prospectus forms a part.

## GENERAL

We agree to pay in full on a subordinated basis, to the extent described in the guarantee agreement, the guarantee payments, as defined below, to the holders of the preferred securities, as and when due, regardless of any defense, right of set-off or counterclaim that First Busey Capital Trust may have or assert other than the defense of payment.

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

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

We may satisfy our obligations to make a guarantee payment by making a direct payment of the required amounts to the holders of the preferred securities or by causing First Busey Capital Trust to pay the amounts to the holders.

The guarantee agreement is a guarantee, on a subordinated basis, of the guarantee payments, but the guarantee only applies to the extent First Busey Capital Trust has funds available for those distributions. If we do not make interest payments on the debentures purchased by First Busey Capital Trust, First Busey Capital Trust will not have funds available to make the distributions and will not pay distributions on the preferred securities.

## STATUS OF THE GUARANTEE

The guarantee constitutes our unsecured obligation that ranks subordinate and junior in right of payment to all of our senior and subordinated debt in the same manner as the debentures. We expect to incur additional indebtedness in the future, although we have no specific plans in this regard presently, and neither the indenture nor the trust agreement limits the amounts of the obligations that we may incur.

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

The guarantee will not be discharged except by payment of the guarantee payments in full to the extent not paid by First Busey Capital Trust or upon distribution of the debentures to the holders of the preferred securities. Because we are a holding company, our right to participate in any distribution of assets of any subsidiary upon the subsidiary's liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent we may be recognized as a creditor of that subsidiary. Our obligations under the guarantee, therefore, will be effectively subordinated to all existing and future liabilities of our subsidiaries, and claimants should look only to our assets for payments under the guarantee.

#### AMENDMENTS AND ASSIGNMENT

Except with respect to any changes that do not materially adversely affect the rights of holders of the preferred securities, in which case no vote will be required, the guarantee may be amended only with the prior approval of the holders of a majority of the aggregate liquidation amount of the outstanding preferred securities. See "Description of the Preferred Securities -- Voting Rights; Amendment of Trust Agreement" beginning on page 27.

#### EVENTS OF DEFAULT; REMEDIES

An event of default under the guarantee agreement will occur upon our failure to make any required guarantee payments or to perform any other obligations under the guarantee. The holders of a majority in aggregate liquidation amount of the preferred securities will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee in respect of the guarantee and may direct the exercise of any power conferred upon the guarantee trustee under the guarantee agreement.

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

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

#### TERMINATION OF THE GUARANTEE

The guarantee will terminate and be of no further force and effect upon:

- full payment of the redemption price of the preferred securities;
- full payment of the amounts payable upon liquidation of First Busey Capital Trust; or
- distribution of the debentures to the holders of the preferred securities.

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

#### INFORMATION CONCERNING THE GUARANTEE TRUSTEE

The guarantee trustee, other than during the occurrence and continuance of our default in performance of the guarantee, undertakes to perform only those duties as are specifically set forth in the guarantee. When an event of default has occurred and is continuing, the guarantee trustee must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to those provisions, the guarantee trustee is under no obligation to exercise any of the powers vested in it by the guarantee at the request of any holder of any preferred securities unless it is offered reasonable indemnity against the costs, expenses and liabilities that might be incurred thereby.

## EXPENSE AGREEMENT

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

## GOVERNING LAW

The guarantee will be governed by Illinois law.

RELATIONSHIP AMONG THE PREFERRED SECURITIES,  
THE DEBENTURES AND THE GUARANTEE

## FULL AND UNCONDITIONAL GUARANTEE

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

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

## SUFFICIENCY OF PAYMENTS

As long as payments of interest and other payments are made when due on the debentures, these payments will be sufficient to cover distributions and other payments due on the preferred securities, primarily because:

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



## ENFORCEMENT RIGHTS OF HOLDERS OF PREFERRED SECURITIES

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

## LIMITED PURPOSE OF FIRST BUSEY CAPITAL TRUST

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

## RIGHTS UPON TERMINATION

Upon any voluntary or involuntary termination, winding-up or liquidation of First Busey Capital Trust involving the liquidation of the debentures, the holders of the preferred securities will be entitled to receive, out of assets held by First Busey Capital Trust, the liquidation distribution in cash. See "Description of the Preferred Securities -- Liquidation Distribution Upon Termination" beginning on page 24.

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

## MATERIAL FEDERAL INCOME TAX CONSEQUENCES

## GENERAL

The following is a summary of the material federal income tax consequences of the purchase, ownership and disposition of preferred securities. Except as otherwise specifically discussed below, this summary only addresses the federal income tax consequences to a person that acquires preferred securities on their original issue at the first price at which a substantial amount of the preferred securities was sold (the "issue price") and that is:

- an individual citizen or resident of the United States;
- a corporation or partnership organized in or under the laws of the United States or any state thereof or the District of Columbia;
- an estate the income of which is subject to federal income taxation regardless of its source; or
- a trust if a court within the United States is able to exercise primary supervision over the administration of such trust and one or more US fiduciaries have the authority to control all the substantial decisions of such trust or certain trusts in existence on August 20, 1996 which were treated as domestic trusts and elected to continue such treatment.

Each of the above is referred to as a "US Person."

This summary does not address all federal income tax consequences that may be applicable to a US Person that is a beneficial owner of preferred securities, nor does it address the tax consequences to:

- persons that are not US Persons;
- persons that may be subject to special treatment under federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts, tax-exempt organizations and dealers in securities or currencies;
- persons that will hold preferred securities as part of a position in a "straddle" or as part of a "hedging," "conversion" or other integrated investment transaction for federal income tax purposes;
- persons whose functional currency is not the US dollar; or
- persons that do not hold preferred securities as capital assets.

This summary is based upon the Internal Revenue Code of 1986, Treasury regulations, Internal Revenue Service rulings and pronouncements and judicial decisions now in effect, all of which are subject to change at any time. Such changes may be applied retroactively in a manner that could cause the federal income tax consequences to vary substantially from the consequences described below, possibly adversely affecting a beneficial owner of preferred securities. The authorities on which this summary is based are subject to various interpretations, and it is therefore possible that the federal income tax treatment of the purchase, ownership and disposition of preferred securities may differ substantially from the treatment described below.

## CLASSIFICATION OF THE DEBENTURES

In the opinion of Chapman and Cutler, the debentures will be classified for federal income tax purposes under current law as our indebtedness, and, by acceptance of a preferred security, each holder covenants to treat the debentures as indebtedness and the preferred securities as evidence of an indirect beneficial ownership interest in the debentures. No assurance can be given, however, that this position will not be challenged by the IRS or, if challenged, that it will be sustained. The remainder of this discussion assumes that the debentures will be classified for federal income tax purposes as our indebtedness.

## CLASSIFICATION OF FIRST BUSEY CAPITAL TRUST

Under current law and assuming compliance with the terms of the trust agreement, in the opinion of Chapman and Cutler, First Busey Capital Trust will be classified for federal income tax purposes as a grantor trust and not as an association taxable as a corporation. The following disclosure regarding certain federal income tax consequences assumes that First Busey Capital Trust will be treated as a grantor trust for federal income tax purposes.

Each holder of preferred securities will be treated as owning, directly or indirectly, an interest in the debentures and, thus, will be required to take into account its pro rata share of interest on the debentures as interest income, including original issue discount, if any, paid or accrued with respect to the debentures whether or not cash is actually distributed to the holders of preferred securities. See " -- Interest Income and Original Issue Discount" below.

## INTEREST INCOME AND ORIGINAL ISSUE DISCOUNT

Except as set forth below, a US holder of a preferred security will take into account its pro rata share of interest on the debentures as interest income at the time it is paid or accrued in accordance with such holder's method of accounting for federal income tax purposes.

We have the right, at any time and from time to time, subject to certain conditions, to defer interest on the debentures, which will in turn result in the deferral of interest on the preferred securities for a period not exceeding 20 consecutive quarters, but not beyond the maturity date of the preferred securities. Under Treasury regulations, remote contingencies that stated interest will not be timely paid are ignored in determining whether a debt instrument is issued with original issue discount. We have concluded that, as of the date of this prospectus, the likelihood of us exercising our option to defer payments of interest on the debentures is remote within the meaning of the Treasury regulations. Therefore, the debentures should not be treated as issued with OID. It should be noted that these Treasury regulations have not been addressed in any rulings or other interpretations by the IRS and it is possible that the IRS could take a position contrary to the interpretation described herein.

Even though not anticipated, as described in the preceding paragraph, if payments of interest are deferred with respect to the debentures, the debentures would at that time be treated, solely for purposes of the OID rules, as having been retired and reissued with OID in an amount equal to the aggregate of all future payments of interest on the debentures. Accordingly, although the distributions would be deferred with respect to the preferred securities, a US holder of preferred securities would be required to accrue its pro rata share of interest on the debentures as OID on an economic accrual basis notwithstanding that we will not make any interest payments during such period on the debentures, and any US holder of preferred securities who disposes of the preferred securities prior to the record date for the payment of distributions following an extension period will be required to take into account any OID accrued during such period but will not receive any cash related thereto. If payment of interest on the debentures is deferred, OID will accrue over the remaining term of the debentures, and correspondingly with respect to the preferred securities, on a constant yield basis calculated in accordance with the method provided by Treasury regulations under section 1272 of the Internal Revenue Code (the "OID Regulations").

If our option to extend the payment of interest on the debentures were not treated as remote, the debentures would be considered issued with OID at initial issuance, which OID would, in general, accrue over the term of the debentures, and correspondingly with respect to the preferred securities, on a constant yield basis. If our option to extend any payment on the debentures were further considered an unconditional option within the meaning of the OID Regulations, OID would also accrue over the term of the debentures on a constant yield basis. We believe that our option to extend the interest payment period on the debentures is not an unconditional option within the meaning of the OID Regulations.

Subsequent uses of the term "interest" in this summary include income in the form of OID.

Because income on the preferred securities will constitute interest, corporate holders of preferred securities will not be entitled to a dividends-received deduction with respect to any income recognized with respect to the preferred securities.

#### MARKET DISCOUNT

If the preferred securities are treated for federal income tax purposes as representing an undivided interest in the debentures and a purchaser of a preferred security acquires a preferred security for less than its issue price (or a preferred security's "revised issue price" if the preferred securities are treated as being issued with OID), the preferred security will be treated as acquired with "market discount." However, market discount with respect to a preferred security will be considered to be zero if it is de minimis. Market discount will be de minimis with respect to a preferred security if it is less than the product of (1) 0.25% of the purchaser's pro rata share of the "stated redemption price at maturity" of the debentures multiplied by (2) the number of complete years to maturity of such debentures after the date of purchase. If the debentures are treated as being sold with OID, the application of the market discount rules to the preferred securities upon the sale of a preferred security is unclear to the extent we make periodic cash payments of interest. You should consult with your own tax advisors with respect to whether market discount will be created upon the sale or other disposition of a preferred security.

The purchaser of a preferred securities with more than a de minimis amount of market discount generally will be required to treat any gain on the sale, exchange, redemption, repayment or other disposition of all or part of the preferred securities as ordinary income to the extent of accrued (but not previously taxed) market discount. Market discount generally will accrue ratably during the period from the date of purchase of such preferred securities to the maturity date of the preferred securities, unless the holder irrevocably elects to accrue such market discount on the basis of a constant interest rate.

A holder who has acquired a preferred security at a market discount generally will be required to defer any deductions of interest expense attributable to any indebtedness incurred or continued to purchase or carry the preferred security to the extent such interest expense exceeds the related interest income. Any such deferred interest expense generally will be allowable as a deduction not later than the year in which the related market discount income is recognized. As an alternative to the inclusion of market discount in income upon disposition of all or a portion of a preferred security, including redemptions, a holder may make an election to include market discount in income as it accrues on all market discount instruments acquired by the holder during or after the taxable year for which the election is made. In that case, the preceding deferral rule for interest expense will not apply. Any election of this nature may not be revoked without the IRS's consent.

#### DISTRIBUTION OF DEBENTURES TO SECURITYHOLDERS

Under current law, a distribution by First Busey Capital Trust of the debentures as described under the caption "Description of the Preferred Securities -- Liquidation Distribution Upon Termination" on page 24 will be non-taxable and will result in the securityholder's receiving directly his or her pro rata share of the debentures previously held indirectly through First Busey Capital Trust, with a holding period and aggregate tax basis equal to the holding period and aggregate tax basis such securityholder had in its preferred securities before such distribution. If, however, the liquidation of First Busey Capital Trust were to occur because First Busey Capital Trust is subject to federal income tax as a corporation, the distribution of debentures to securityholders by First Busey Capital Trust would be a taxable event to First Busey Capital Trust and it would recognize gain or loss as if it sold the debentures for their then fair market value. Each securityholder would also recognize gain or loss as if the securityholder had exchanged preferred securities for the fair market value of the debentures it received upon the liquidation of First Busey Capital Trust. A securityholder will include interest in respect of debentures received from First Busey Capital Trust in the manner described above under " -- Interest Income and Original Issue Discount" and " -- Market Discount."

## SALES OR REDEMPTIONS OF PREFERRED SECURITIES

A holder of preferred securities that sells or redeems for cash preferred securities will recognize gain or loss equal to the difference between the holder's adjusted tax basis in the preferred securities and the amount realized on the sale of such preferred securities. If the debentures are deemed to be issued with OID, the tax basis of a holder of preferred securities generally will be the holder's initial purchase price, increased by OID previously accrued by the holder of preferred securities prior to the date of disposition and decreased by distributions or other payments received on the preferred securities that do not represent payments of principal on the debentures. Such gain or loss generally will be a capital gain or loss, except to the extent any amount realized is attributable to interest income, the tax on which will be dependent on the holding period of the preferred securities and other factors.

Should we exercise our option to defer any payment of interest on the debentures, resulting in deferral of payments on the preferred securities, the preferred securities may trade at a price that does not accurately reflect the value of accrued but unpaid interest with respect to the underlying debentures. In the event of such a deferral, a holder of preferred securities who disposes of its preferred securities between record dates for payments of distributions thereon will be required to accrue interest income to the date of disposition as OID, but may not receive the cash related thereto. However, such holder of preferred securities will add such amount to its adjusted tax basis in the preferred securities. To the extent the selling price is less than the holder's of preferred securities adjusted tax basis, such holder of preferred securities will recognize a capital loss. Subject to certain limited exceptions, capital losses cannot be applied to offset ordinary income for federal income tax purposes.

## EFFECT OF POSSIBLE CHANGES IN TAX LAWS

Congress and various Presidential administrations have considered certain proposed tax law changes in the past that would, among other things, generally deny corporate issuers a deduction for interest in respect of certain debt obligations depending on their terms. Although these proposed tax law changes have not been enacted into law, there can be no assurance that tax law changes will not be introduced which, if enacted after the date hereof, may adversely affect the federal income tax deductibility of interest payable on the debentures. Accordingly, there can be no assurance that a Tax Event will not occur. A Tax Event would permit us, upon approval of the Federal Reserve, if then required, to cause a redemption of the preferred securities before, as well as after, , 2006. See "Description of the Debentures -- Redemption" beginning on page 33 and "Description of the Preferred Securities -- Redemption or Exchange -- Redemption upon a Tax Event, Investment Company Event or Capital Treatment Event" beginning on page 21.

## INFORMATION REPORTING

Generally, interest paid, or, if applicable, OID accrued, on the preferred securities held of record by individual citizens or residents of the United States, or certain trusts, estates and partnerships, will be reported to the IRS on Forms 1099-INT, or, where applicable, Forms 1099-OID, which forms should be mailed to the holders by January 31 following each calendar year.

## BACKUP WITHHOLDING

Unless a holder of preferred securities complies with certain identification requirements, "backup" withholding tax of 31% may apply to payments made on, and proceeds from the sale of, preferred securities. Any withheld amounts will be allowed as a credit against the holder's federal income tax liability, provided the required information is provided to the IRS on a timely basis.

THE FEDERAL INCOME TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON THE PARTICULAR SITUATION OF A HOLDER OF PREFERRED SECURITIES. HOLDERS OF PREFERRED SECURITIES SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE PREFERRED SECURITIES, INCLUDING THE TAX CONSEQUENCES UNDER STATE, LOCAL, FOREIGN AND OTHER TAX LAWS AND THE POSSIBLE EFFECTS OF CHANGES IN FEDERAL OR OTHER TAX LAWS TO THE EXTENT THAT THE TAX CONSEQUENCES ARE NOT ADDRESSED ABOVE, SUCH AS THE PARTICULAR PERSONAL TAX CONSEQUENCES WHICH MAY VARY FOR INVESTORS IN DIFFERENT TAX SITUATIONS.

## ERISA CONSIDERATIONS

Employee benefit plans that are subject to the Employee Retirement Income Security Act of 1974, or section 4975 of the Internal Revenue Code, generally may purchase preferred securities, subject to the investing fiduciary's determination that the investment in preferred securities satisfies ERISA's fiduciary standards and other requirements applicable to investments by the plan.

In any case, we and/or any of our affiliates may be considered a "party in interest" (within the meaning of ERISA) or a "disqualified person" (within the meaning of section 4975 of the Internal Revenue Code) with respect to certain plans. These plans generally include plans with respect to which we or any of our affiliates are a fiduciary or provide services to either the plan or the sponsor or contributor to such plan. The acquisition and ownership of preferred securities by a plan (or by an individual retirement arrangement described in section 4975(e)(1) of the Internal Revenue Code) with respect to which we or any of our affiliates are considered a party in interest or a disqualified person may result in a prohibited transaction under ERISA or the Internal Revenue Code, unless the preferred securities are acquired pursuant to and in accordance with an applicable exemption.

As a result, plans with respect to which we or any of our affiliates or any of its affiliates is a party in interest or a disqualified person should not acquire preferred securities unless the preferred securities are acquired pursuant to and in accordance with an applicable exemption. Any other plans or other entities whose assets include plan assets subject to ERISA or section 4795 of the Internal Revenue Code proposing to acquire preferred securities should consult with their own counsel.

UNDERWRITING

Howe Barnes Investments, Inc. and Stephens Inc. are acting as representatives of the underwriters listed below. Subject to the terms and conditions set forth in the underwriting agreement among us, First Busey Capital Trust and the underwriters, the underwriters have severally agreed to purchase from First Busey Capital Trust an aggregate of 2,000,000 preferred securities, in the amounts listed below opposite their respective names.

UNDERWRITERS -----	NUMBER OF PREFERRED SECURITIES -----
Howe Barnes Investments, Inc.....	
Stephens Inc.....	
Total.....	----- 2,000,000 =====

Under the terms and conditions of the underwriting agreement, the underwriters are committed to accept and pay for all of the preferred securities, if any are taken. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or, in certain cases, the underwriting agreement may be terminated. In the underwriting agreement, the obligations of the underwriters are subject to approval of certain legal matters by their counsel, including the authorization and the validity of the preferred securities, and to other conditions contained in the underwriting agreement, such as receipt by the underwriters of officers' certificates and legal opinions.

First Busey Capital Trust has granted to the underwriters an option, exercisable within 30 days after the date of this prospectus, to purchase up to 300,000 additional preferred securities. If the underwriters purchase any of the additional preferred securities under this option, each underwriter will be committed to purchase the additional shares in approximately the same proportion as allocated to them in the table above. The underwriters may exercise the option only for the purpose of covering over-allotments, if any, made in connection with the distribution of the preferred securities being offered.

The table below shows the price and proceeds on a per security and aggregate basis. The proceeds to be received by First Busey Capital Trust, as shown in the table below, do not reflect various expenses of the offering, including registration and stock exchange fees, trustees' fees, accounting fees and related expenses, fees and expenses of our legal counsel, and printing expenses, which are estimated to be \$340,000 and payable by us.

	PER PREFERRED SECURITY -----	TOTAL -----	TOTAL WITH EXERCISE OF OVER-ALLOTMENT OPTION -----
Public offering price.....	\$10.00	\$20,000,000	\$23,000,000
Proceeds, before expenses, to First Busey Capital Trust.....	10.00	20,000,000	23,000,000
Underwriting commission.....	-----	-----	-----
Proceeds, before expenses, to us.....	-----	-----	-----

The underwriters propose to offer the preferred securities directly to the public at the public offering price set forth alone, and to certain securities dealers, who may include the underwriters, at this price, less a concession not in excess of \$

- ----- per preferred security. The underwriters may allow, and the selected dealers may reallow, a concession not in excess of \$
- ----- per preferred security to certain brokers and dealers.

The offering of the preferred securities is made for delivery when, as and if accepted by the underwriters and subject to prior sale and to withdrawal, cancellation or modification of the offering without notice. The underwriters reserve the right to reject any order for the purchase of the preferred securities. After the preferred securities are released for sale to the public, the underwriters may, from time to time, change the offering price and other selling terms.

We and First Busey Capital Trust have agreed to indemnify the several underwriters against several liabilities, including liabilities under the Securities Act.

We have applied to designate the preferred securities for inclusion on Nasdaq under the symbol "BUSEP." Even if approved for such designation, neither we nor the underwriters can assure you as to the liquidity of the preferred securities or that an active and liquid market will develop or, if developed, that the market will continue. The offering price and distribution rate have been determined by negotiations between the underwriters and us, and the offering price of the preferred securities may not be indicative of the market price following the offering. The representatives of the underwriters will have no obligation to make a market in the preferred securities, however, and may cease market-making activities, if commenced, at any time.

In connection with the offering, the underwriters may engage in transactions that are intended to stabilize, maintain or otherwise affect the price of the preferred securities during and after the offering, such as the following:

- the underwriters may over-allot or otherwise create a short position in the preferred securities for their own account by selling more preferred securities than have been sold to them;
- the underwriters may elect to cover any short position by purchasing preferred securities in the open market or by exercising the over-allotment option;
- the underwriters may stabilize or maintain the price of the preferred securities by bidding;
- the underwriters may engage in passive market making transactions; and
- the underwriters may impose penalty bids, under which selling concessions allowed to syndicate members or other broker-dealers participating in this offering are reclaimed if preferred securities previously distributed in the offering are repurchased in connection with stabilization transactions or otherwise.

The effect of these transactions may be to stabilize or maintain the market price at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also affect the price of the preferred securities to the extent that it discourages resales. No representation is made as to the magnitude or effect of any such stabilization or other transactions. Such transactions may be effected on Nasdaq or otherwise and, if commenced, may be discontinued at any time.

Because the National Association of Securities Dealers, Inc. may view the preferred securities as interests in a direct participation program, the offer and sale of the preferred securities is being made in compliance with the provisions of Rule 2810 under the NASD Conduct Rules.

#### LEGAL MATTERS

Certain matters of Delaware law relating to the validity of the preferred securities and the formation of First Busey Capital Trust have been passed upon by Richards, Layton & Finger, P.A., Wilmington, Delaware, special Delaware counsel to us and First Busey Capital Trust. The validity of the preferred securities guarantee, the debentures and matters relating to federal income tax considerations have been passed upon for us by Chapman and Cutler, Chicago, Illinois, counsel to us and First Busey Capital Trust. Certain legal matters will be passed upon for the underwriters by Barack Ferrazzano Kirschbaum Perlman & Nagelberg, Chicago, Illinois. Chapman and Cutler has relied, and Barack Ferrazzano Kirschbaum Perlman & Nagelberg will rely, on the opinion of Richards, Layton & Finger, P.A. as to matters of Delaware law.



## EXPERTS

Our consolidated financial statements, incorporated in this prospectus by reference from our Annual Report on Form 10-K for the fiscal year ended December 31, 2000, have been audited by McGladrey & Pullen, LLP, independent auditors, as set forth in their report included in our Annual Report. These consolidated financial statements are incorporated by reference in this prospectus in reliance upon the report given on the authority of McGladrey & Pullen, LLP as experts in accounting and auditing.

## WHERE YOU CAN FIND INFORMATION

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

We file periodic reports, proxy statements and other information with the SEC. Our filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also inspect and copy these materials at the public reference facilities of the SEC at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, as well as at 500 West Madison Street, Suite 1400, Chicago, Illinois 60661 and 75 Park Place, Room 1400, New York, New York 1000. Copies of such material can be obtained at prescribed rates from the Public Reference Section of the SEC at 450 Fifth Street N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information.

First Busey Capital Trust is not currently subject to the information reporting requirements of the Exchange Act and, although First Busey Capital Trust will become subject to such requirements upon the effectiveness of the registration statement, it is not expected that First Busey Capital Trust will be required to file separate reports under the Exchange Act.

Each holder of the preferred securities will receive a copy of our annual report at the same time as we furnish the annual report to the holders of our common stock.

## DOCUMENTS INCORPORATED BY REFERENCE

We "incorporate by reference" into this prospectus the information in documents we file with the SEC, which means that we can disclose important information to you through those documents. The information incorporated by reference is an important part of this prospectus. Some information contained in this prospectus updates the information incorporated by reference and some information that we file subsequently with the SEC will automatically update this prospectus. We incorporate by reference the documents listed below, all of which are filed under SEC File No. 0-15950:

(a) our Annual Report on Form 10-K for the year ended December 31, 2000, filed with the SEC on March 26, 2001;

(b) our Quarterly Report on Form 10-Q for the quarter ended March 31, 2001, filed with the SEC on May 15, 2001, as amended on Form 10-Q/A, filed with the SEC on May 17, 2001; and

(c) our Current Report on Form 8-K filed with the SEC on April 17, 2001.

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

You may request, and we will provide, a copy of these filings at no cost by contacting Barbara J. Kuhl, at the following address and phone number:

First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61801  
(217) 365-4556

-----  
-----  
2,000,000 PREFERRED SECURITIES

FIRST BUSEY CAPITAL TRUST I

---% CUMULATIVE TRUST PREFERRED SECURITIES

LIQUIDATION AMOUNT \$10 PER  
PREFERRED SECURITY

FULLY, IRREVOCABLY AND UNCONDITIONALLY  
GUARANTEED, ON A SUBORDINATED BASIS, AS  
DESCRIBED IN THIS PROSPECTUS, BY

[FIRST BUSEY CORPORATION LOGO]

-----  
PROSPECTUS  
-----

HOWE BARNES INVESTMENTS, INC.  
STEPHENS INC.

-----, 2001  
-----  
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PART II  
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The following table sets forth the various expenses payable in connection with the sale and distribution of the securities being registered, other than underwriting discounts and commissions. All of such expenses will be paid by First Busey Corporation. All amounts shown are estimates, except the SEC registration fee and the NASD and Nasdaq filing fees:

SEC registration fee.....	\$ 5,750
NASD filing fee.....	2,800
Nasdaq listing fee.....	8,000
	-----
Trustees' fees.....	20,000
	-----
Printing and mailing expenses.....	150,000
	-----
Fees and expenses of counsel.....	110,000
	-----
Accounting and related expenses.....	35,000
	-----
Blue Sky fees.....	2,000
	-----
Miscellaneous.....	6,450
	-----
Total.....	\$340,000
	=====

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Under Section 78.7502 of the Nevada Corporation Law ("NCL"), directors and officers may be indemnified against judgments, fines and amounts paid in settlement and reasonable expenses (including attorneys' fees), actually and reasonably incurred as a result of specified actions or proceedings (including appeals), whether civil or criminal (other than an action by or in the right of the corporation -- a "derivative action") if they acted in good faith and for a purpose which they reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification only extends to amounts paid in settlement and reasonable expenses (including attorneys' fees) actually and reasonably incurred by them in connection with the defense or settlement of such an action (including appeals), except in respect of a claim, issue or matter as to which such person shall have been finally adjudged to be liable to the corporation, unless and only to the extent a court of competent jurisdiction deems proper.

In accordance with Section 78.037(1) of the NCL, Article Tenth of First Busey Corporation's Restated Articles of Incorporation, as amended, eliminates the personal liability of the Corporation's directors to First Busey Corporation or its stockholders for monetary damages for breach of their fiduciary duties as directors, with certain limited exceptions set forth in said Article Tenth and Section 78.037(1).

The Amended and Restated Trust Agreement will provide for indemnification of the Delaware Trustee and each of the administrative trustees by First Busey Corporation against any loss, damage, claims, liability, penalty or expense of any kind incurred by the trustees in connection with the performance of their duties or powers under the agreement in a manner reasonably believed by the trustee to be within the scope of its authority under the agreement, except that none of these trustees will be so indemnified for any loss, damage or claim incurred by reason of such trustee's gross negligence, bad faith or willful misconduct. Similarly, the agreement provides for indemnification of the Property Trustee, except that the Property Trustee is not indemnified from liability for its own negligent action, negligent failure to act or willful misconduct. Under the agreement, First Busey Corporation agrees to advance those expenses incurred by any trustee in defending any such claim, demand, action, suit or proceeding.

## ITEM 16. EXHIBITS.

EXHIBIT NUMBER -----	DESCRIPTION -----
1.1	Form of Underwriting Agreement.
4.1	Form of Indenture.
4.2	Form of Subordinated Debenture (included as Exhibit A to Exhibit 4.1).
4.3	Certificate of Trust.
4.4	Trust Agreement.
4.5	Form of Amended and Restated Trust Agreement.
4.6	Form of Preferred Securities Certificate (included as Exhibit D to Exhibit 4.5).
4.7	Form of Preferred Securities Guarantee Agreement.
4.8	Form of Agreement as to Expenses and Liabilities (included as Exhibit C to Exhibit 4.5).
5.1	Opinion of Chapman and Cutler.
5.2	Opinion of Richards, Layton & Finger, P.A.
8.1	Opinion of Chapman and Cutler, as to certain tax matters.
12.1	Calculation of ratios of earnings to fixed charges.
23.1	Consent of McGladrey & Pullen, LLP.
23.2	Consent of Chapman and Cutler (included in opinions filed as Exhibits 5.1 and 8.1).
23.3	Consent of Richards, Layton & Finger, P.A. (included in opinion filed as Exhibit 5.2).
24.1	Powers of Attorney (included as part of signature pages).
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as trustee under the Indenture.
25.2	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as trustee under the Trust Agreement.
25.3	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as trustee under the Guarantee Agreement.

## ITEM 17. UNDERTAKINGS.

The undersigned registrants hereby undertake that, for purposes of determining any liability under the Securities Act of 1933, each filing of First Busey Corporation's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrants pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, each registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrants hereby undertake that:

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, First Busey Capital Trust I certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Urbana, State of Illinois, on May 15, 2001.

FIRST BUSEY CAPITAL TRUST I  
By: FIRST BUSEY CORPORATION, as  
Depositor

By: /s/ Douglas C. Mills  
-----  
Douglas C. Mills  
Chief Executive Officer and  
Chairman of the Board

Pursuant to the requirements of the Securities Act of 1933, First Busey Corporation certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Urbana, State of Illinois, on May 15, 2001.

FIRST BUSEY CORPORATION

By: /s/ Barbara J. Kuhl  
-----  
Barbara J. Kuhl  
President and Chief Operating  
Officer

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below hereby designates and appoints Douglas C. Mills and Barbara J. Kuhl, and each of them, any one of whom may act without the joinder of the other, as such person's true and lawful attorney-in-fact and agents (the "Attorneys-in-Fact") with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, which amendments may make such changes in this registration statement as any Attorney-in-Fact deems appropriate, and any registration statement relating to the same offering filed pursuant to Rule 462(b) under the Securities Act of 1933 and requests to accelerate the effectiveness of such registration statements, and to file each such amendment with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto such Attorneys-in-Fact and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that such Attorneys-in-Fact or either of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on May 15, 2001.

NAME -----	TITLE -----
/s/ DOUGLAS C. MILLS ----- Douglas C. Mills	Chairman of the Board, Chief Executive Officer
/s/ BARBARA J. JONES ----- Barbara J. Jones	Chief Financial Officer
/s/ JOSEPH M. AMBROSE ----- Joseph M. Ambrose	Director
----- Samuel P. Banks	Director
/s/ T.O. DAWSON ----- T.O. Dawson	Director
/s/ VICTOR F. FELDMAN ----- Victor F. Feldman	Director
/s/ KENNETH M. HENDREN ----- Kenneth M. Hendren	Director
/s/ E. PHILLIPS KNOX ----- E. Phillips Knox	Director
/s/ P. DAVID KUHL ----- P. David Kuhl	Director
/s/ BARBARA J. KUHL ----- Barbara J. Kuhl	Director



## NAME

-----

## TITLE

-----

/s/ V.B. LEISTER, JR.

Director

-----  
V.B. Leister, Jr.

/s/ LINDA M. MILLS

Director

-----  
Linda M. Mills

/s/ EDWIN A. SCHARLAU

Director

-----  
Edwin A. Scharlau

/s/ DAVID C. THIES

Director

-----  
David C. Thies

/s/ ARTHUR R. WYATT

Director

-----  
Arthur R. Wyatt

## EXHIBIT INDEX

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\$20,000,000 PREFERRED SECURITIES\*  
FIRST BUSEY CAPITAL TRUST I

[ ]% CUMULATIVE PREFERRED SECURITIES  
(LIQUIDATION AMOUNT OF \$10 PER PREFERRED SECURITY)

UNDERWRITING AGREEMENT

June \_\_, 2001

Howe Barnes Investments, Inc.  
Stephens Inc.  
As Representatives of Several  
Underwriters Named in Schedule A  
c/o Howe Barnes Investments, Inc.  
135 South LaSalle Street  
Chicago, Illinois 60603

Ladies and Gentlemen:

First Busey Corporation, a Nevada corporation (the "Company"), and its subsidiary, First Busey Capital Trust I, a statutory business trust organized under the Delaware Business Trust Act, as amended (the "Delaware Act") (the "Trust" and, together with the Company, the "Offerors"), propose, subject to the terms and conditions stated herein, to issue and sell to the several underwriters named on Schedule A (individually, an "Underwriter," and collectively, the "Underwriters"), an aggregate of \$20,000,000, representing 2,000,000 securities (the "Firm Securities") of the Trust's [ ]% Cumulative Preferred Securities, with a liquidation preference of \$10.00 per preferred security, and, at the election of the Underwriters, up to 300,000 additional securities (the "Option Securities"). The Firm Securities and the Option Securities are herein collectively called the "Preferred Securities." The Offerors propose that the Trust issue the Preferred Securities pursuant to a Trust Agreement, as amended and restated, among Wilmington Trust Company, as Property Trustee and Delaware Trustee, the administrative trustees named therein (the "Administrative Trustees") and the Company (the "Trust Agreement"). The Preferred Securities will be guaranteed by the Company with respect to distributions and payments upon liquidation, redemption and otherwise (the "Guarantee") pursuant to a Guarantee Agreement (the "Guarantee Agreement"), to be dated June \_\_, 2001, between the Company and Wilmington Trust Company, as trustee (the "Guarantee Trustee"), and entitled to the benefits of certain backup undertakings described in the Prospectus (as defined herein) with respect to the Company's agreement pursuant to the Expense Agreement (as defined herein) to pay all expenses relating to administration of the Trust.

The proceeds of the sale of the Preferred Securities will be used to purchase junior subordinated deferrable interest debentures (the "Junior Subordinated Debentures") issued by the Company pursuant to an Indenture, to be dated June \_\_, 2001, between the Company and Wilmington Trust Company, as trustee (the "Indenture").

\* The Underwriters have been granted an over-allotment option, exercisable at their election in accordance with Section 2 herein, to purchase up to an additional \$3,000,000 Preferred Securities.

The Offerors have filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File Nos. [ ] and [ ]) and a related preliminary prospectus for the registration of the Preferred Securities, the Guarantee and the Junior Subordinated Debentures, under the Securities Act of 1933, as amended (the "Act"), and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), and the rules and regulations thereunder. The registration statement, as amended, at the time it was declared effective, including the information (if any) deemed to be part thereof pursuant to Rule 430A under the Act, is herein referred to as the "Registration Statement." The form of prospectus first filed by the Offerors with the Commission pursuant to Rules 424(b) and 430A under the Act is referred to herein as the "Prospectus." Each preliminary prospectus included in the Registration Statement prior to the time it becomes effective or filed with the Commission pursuant to Rule 424(a) under the Act is referred to herein as a "Preliminary Prospectus." If the Company elects to rely on Rule 434 of the Act, all references to "Prospectus" shall be deemed to include, without limitation, the form of prospectus and the term sheet, taken together, provided to the Underwriters by the Company in accordance with Rule 434 of the Act ("Rule 434 Prospectus"). Any registration statement (including any amendment or supplement thereto or information which is deemed part thereof) filed by the Offerors under Rule 462(b) ("Rule 462(b) Registration Statement") shall be deemed to be part of the "Registration Statement" as defined herein, and any prospectus (including any amendment or supplement thereto or information which is deemed part thereof) included in such registration statement shall be deemed to be part of the "Prospectus," as defined herein, as appropriate. The Securities Exchange Act of 1934, as amended, is referred to herein as the "Exchange Act." Any reference herein to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Form S-3 under the Act (the "Incorporated Documents"), as of the date of such Preliminary Prospectus or Prospectus, as the case may be. Any document filed by either the Company or the Trust under the Exchange Act after the effective date of the Registration Statement or the date of the Prospectus and incorporated by reference in the Prospectus shall be deemed to be included in the Registration Statement and the Prospectus as of the date of such filing. Copies of the Registration Statement, including all exhibits thereto, together with copies of all documents incorporated by reference therein, any amendments thereto and all Preliminary Prospectuses have been delivered to you.

The Offerors hereby confirm their agreement with respect to the purchase of the Preferred Securities by the Underwriters as follows:

Section 1. Representations and Warranties of the Offerors. (a) The Offerors jointly and severally represent and warrant to, and agree with, each of the Underwriters that:

(i) The Registration Statement has been declared effective under the Act, and no post-effective amendment to the Registration Statement has been filed with the Commission as of the date of this Agreement. No stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted or threatened by the Commission.

(ii) No order preventing or suspending the use of any Preliminary Prospectus has been issued by the Commission, and each Preliminary Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Act and the Trust Indenture Act and the rules and regulations of the Commission promulgated thereunder, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Offerors make no representation or warranty as to information contained in or omitted in reliance upon, and in conformity with, written information furnished to the Offerors by or on behalf of any Underwriter, expressly for use in the preparation thereof.

(iii) The Registration Statement conforms, and the Prospectus and any amendments or supplements thereto will conform, in all material respects to the requirements of the Act, including for use of Form S-3, and the Trust Indenture Act and the rules and regulations thereunder. Neither the Registration Statement nor any amendment thereto, and neither the Prospectus nor any supplement thereto, contains or will contain, as the case may be, any untrue statement of a material fact or omits or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that the Offerors make no representation or warranty as to (A) information contained in or omitted from the Registration Statement or the Prospectus, or any such amendment or supplement, in reliance upon, and in conformity with, written information furnished to the Offerors by or on behalf of any Underwriter, expressly for use in the preparation thereof or (B) information in those parts of the Registration Statement which constitute the Statement of Eligibility and Qualification ("Form T-1") under the Trust Indenture Act.

The Incorporated Documents, when they were or will be filed with the Commission, conformed or will conform in all material respects to the requirements of the Exchange Act and none of such documents contained or will contain an untrue statement of a material fact or omitted or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iv) The Company and each of its subsidiaries have been duly incorporated and are validly existing as corporations or banking associations in good standing under the laws of their respective places of incorporation, with corporate power and authority to own their respective properties and conduct their respective businesses as described in the Prospectus; the Company and each of its non-bank subsidiaries are duly qualified to do business as foreign corporations under the corporation law of, and are in good standing as such in, each jurisdiction in which such qualification is required except in any such case where the failure to so qualify or be in good standing would not have a material adverse effect upon the condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole; and no proceeding of which the Company has knowledge has been instituted in any such jurisdiction,

revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification.

(v) (A) The Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Act with full trust power and authority to own property and to conduct its business as described in the Registration Statement and Prospectus and is authorized to do business in each jurisdiction in which such qualification is required, except where the failure to so qualify would not have a material adverse effect on the Trust's condition (financial or otherwise) or results of operations taken as a whole; (B) the Trust has conducted and will conduct no business other than the transactions contemplated by the Trust Agreement and described in the Prospectus; (C) the Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus; (D) the Trust is and will be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation; and (E) the Trust is and will be treated as a consolidated subsidiary of the Company pursuant to generally accepted accounting principles.

(vi) The Company owns directly or indirectly 100 percent of the issued and outstanding capital stock of each of its subsidiaries, in each case free and clear of any claims, liens, encumbrances or security interests, except for any such stock or interests pledged against borrowings of the Company or any of its subsidiaries, and all of such capital stock has been duly authorized and validly issued and is fully paid and nonassessable. The Company's bank subsidiaries consist exclusively of the following: Busey Bank and Busey Bank fsb, which are collectively hereinafter referred to as the "Banks."

(vii) All of the issued and outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, were offered and sold in compliance with all federal and state securities laws, and were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities. Except as otherwise stated in the Registration Statement and Prospectus, there are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, the Junior Subordinated Debentures, the common securities of the Trust held by the Company (the "Common Securities") or the Preferred Securities. Neither the filing of the Registration Statement nor the registration of the Preferred Securities, the Guarantee or the Junior Subordinated Debentures gives rise to any rights for or relating to the registration of any capital stock or other securities of the Company or the Trust. The Company has an authorized and outstanding capitalization as set forth in the Registration Statement and the Prospectus.

(viii) Each of this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Agreement as to Expenses and Liabilities (the "Expense Agreement") has been duly authorized, executed and delivered by the Company and/or the Trust, as the case may be, and constitutes a valid, legal and binding obligation of the Company and/or the Trust, as the case may be, enforceable in accordance with its

terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity and, with respect to Section 7 hereof, by the public policy underlying the federal or state securities laws. The execution, delivery and performance of this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement and the consummation of the transactions herein or therein contemplated will not result in a breach of the Company's or any of its subsidiaries' charters or bylaws, the Trust Agreement or the Trust's certificate of trust filed with the State of Delaware on May 15, 2001 (the "Certificate of Trust") or breach or violation of any of the terms and provisions of, or constitute a default under, any statute, any indenture, mortgage, deed of trust, loan agreement, lease, franchise, license or other agreement or instrument to which the Trust, the Company or any of the Company's subsidiaries is a party or by which the Trust, the Company or any of the Company's subsidiaries is bound or to which any property or assets of the Trust, the Company or any of the Company's subsidiaries is subject, or any order, rule, regulation or decree of any court or governmental agency or body having jurisdiction over the Company, any of its subsidiaries or the Trust or having jurisdiction over any of the properties of the Company, any of its subsidiaries or the Trust which breach, violation or default would have a material adverse effect upon the condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole. No consent, approval, authorization or order of, or filing with, any court or governmental agency or body is required for the execution, delivery and performance of this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement or for the consummation of the transactions contemplated hereby or thereby, including the issuance or sale of the Junior Subordinated Debentures by the Company and the Common Securities and the Preferred Securities by the Trust, except such as may be required under the Act, all of which have been obtained or made, and under state securities or blue sky laws and clearance of such offering of the Preferred Securities by the Underwriters with the National Association of Securities Dealers, Inc. ("NASD") and except where any failure to obtain such consents, approvals, authorizations or orders or to make such filings will not have a material adverse effect upon the condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole. Each of the Company and the Trust, as the case may be, has full power and authority to enter into this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement, as the case may be, and to authorize, issue and sell the Junior Subordinated Debentures or the Common Securities and the Preferred Securities, as the case may be, as contemplated by this Agreement; and each of the Indenture, the Trust Agreement and the Guarantee Agreement has been duly qualified under the Trust Indenture Act and will conform in all material respects to the statements relating thereto in the Registration Statement and the Prospectus.

(ix) The Junior Subordinated Debentures have been duly authorized by the Company and at the Closing Date or the Option Closing Date (each as defined below),

as the case may be, will have been duly executed by the Company and, when authenticated in the manner provided for in the Indenture and delivered against payment therefor as described in the Prospectus, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity, will be in the form contemplated by, and entitled to the benefits of, the Indenture, will conform to the statements relating thereto in the Prospectus, and will be owned by the Trust free and clear of any security interest, pledge, lien, encumbrance, claim or equity.

(x) The Common Securities have been duly authorized by the Trust Agreement and, when issued and delivered by the Trust to the Company against payment therefor as described in the Prospectus, will be validly issued and (subject to the terms of the Trust Agreement) fully paid and nonassessable undivided beneficial interests in the assets of the Trust and will conform to all statements relating thereto contained in the Prospectus; and at the Closing Date or the Option Closing Date, as the case may be, all of the issued and outstanding Common Securities of the Trust will be directly owned by the Company free and clear of any security interest, pledge, lien, encumbrance, claim or equity.

(xi) The Preferred Securities have been duly authorized by the Trust Agreement and, when issued and delivered pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and fully paid and non-assessable undivided beneficial interests in the Trust, will be entitled to the benefits of the Trust Agreement and will conform to the statements relating thereto contained in the Prospectus.

(xii) The Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement are in substantially the respective forms filed as exhibits to the Registration Statement.

(xiii) The Company's obligations under the Guarantee Agreement are subordinated and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) of the Company.

(xiv) The Junior Subordinated Debentures are subordinate and junior in right of payment to all Senior Indebtedness of the Company.

(xv) Each of the Administrative Trustees of the Trust is an officer or director of the Company and has been duly authorized by the Company to execute and deliver the Trust Agreement.

(xvi) The consolidated financial statements of the Company included or incorporated by reference in the Registration Statement present fairly the consolidated financial position of the Company as of the respective dates of such financial



statements, and the consolidated results of operations and cash flows of the Company for the respective periods covered thereby, are in conformity with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed in the Prospectus. The financial information included and incorporated by reference in the Prospectus under "Selected Consolidated Financial and Other Data" presents fairly, on the basis stated in the Prospectus, the information set forth therein.

(xvii) The accountants who have expressed their opinions with respect to certain of the financial statements included or incorporated by reference in the Registration Statement are independent accountants as required by the Act.

(xviii) Neither the Company nor any subsidiary is in violation of its respective charter; the Trust is not in violation of the Trust Agreement or its Certificate of Trust; and none of the Trust, the Company or its subsidiaries is in violation or otherwise in default under any consent decree, or in default with respect to any provision of any material lease, loan agreement, franchise, license, permit or other contract obligation to which it is a party which would have a material adverse effect upon the condition (financial or otherwise) or results of operations of the Trust, the Company and the Company's subsidiaries, taken as a whole ("Material Adverse Effect"); and there does not exist any state of facts which constitutes an Event of Default as defined in such documents or which, with notice or lapse of time or both, would constitute such an Event of Default, in each case, except for defaults which neither singly nor in the aggregate would have a Material Adverse Effect.

(xix) With the exception of Thomas Reuter vs. Mastercard International, Inc. et al., which has been previously disclosed to the Representatives, there are no legal or governmental proceedings pending, or to the Trust's or Company's knowledge, threatened to which the Trust, the Company or any of the Company's subsidiaries is or may reasonably be expected to be a party or of which property owned or leased by the Trust, the Company or any of the Company's subsidiaries is or may reasonably be expected to be the subject, or related to environmental or discrimination matters which if adversely determined would have a Material Adverse Effect that are not disclosed in the Prospectus.

(xx) The Company is a financial holding company duly registered with the Board of Governors of the Federal Reserve System ("Federal Reserve") under the Bank Holding Company Act of 1956, as amended. The conduct of the business of the Company and each of its subsidiaries is in compliance in all respects with applicable federal, state, local and foreign laws and regulations, except where the failure to be in compliance would not have a material adverse effect upon the condition (financial or otherwise) or results of operation of the Company and its subsidiaries taken as a whole. The Company and its subsidiaries own or possess or have obtained all governmental licenses, permits, consents, orders, approvals and other authorizations necessary to lease or own, as the case may be, and to operate their properties and to carry on their businesses as presently conducted except where the failure to have obtained such licenses, permits, consents, orders, approvals and other authorization would not have a material adverse effect upon the condition (financial or otherwise) or results of

operation of the Company and its subsidiaries taken as a whole, and neither the Company nor its subsidiaries have received any notice of proceedings related to revocation or modification of any such licenses, permits, consents, orders, approvals or authorizations which singly or in the aggregate, if the subject of an unfavorable ruling or finding, would result in a material adverse effect upon the condition (financial or otherwise) or results of operation of the Company and its subsidiaries taken as a whole. Neither the Company nor any Bank is a party or subject to any agreement or memorandum with, or directive or order issued by, the Federal Reserve, the Office of Thrift Supervision, the Illinois Office of Banks and Real Estate or any other bank regulatory authority, which imposes any restrictions or requirements not generally applicable to bank holding companies or commercial banks, except as described or contemplated in the Prospectus.

(xxi) The Company and each of its subsidiaries have good and marketable title to all the properties and assets reflected as owned in the financial statements hereinabove described (or elsewhere in the Prospectus), subject to no lien, mortgage, pledge, charge or encumbrance of any kind except for such properties as are pledged against the borrowings of the Company or any of its subsidiaries and except those, if any, reflected in such financial statements (or elsewhere in the Prospectus) or which are not material to the Company and its subsidiaries taken as a whole. The Company and each of its subsidiaries hold their respective leased properties which are material to the Company and its subsidiaries taken as a whole under valid and binding leases.

(xxii) The Offerors have not taken and will not take, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of the Preferred Securities.

(xxiii) There is no material contract or other document of a character required to be described in the Registration Statement or the Prospectus (or the Incorporated Documents) or to be filed as an exhibit to the Registration Statement (or the Incorporated Documents) which is not described or filed as required.

(xxiv) The Trust and the Company have filed all necessary federal and state income and franchise tax returns and have paid all taxes shown as due thereon, and there is no tax deficiency that has been or to the knowledge of the Trust or the Company, threatened to be asserted against the Trust or the Company or any of their properties or assets that would or could be expected to have a Material Adverse Effect.

(xxv) The Trust and the Company, together with the Company's subsidiaries, own and possess all right, title and interest in and to, or have duly licensed from third parties, all patents, patent rights, trade secrets, inventions, know-how, trademarks, trade names, copyrights, service marks and other proprietary rights ("Trade Rights") material to the business of the Trust and the Company and each of the Company's subsidiaries taken as a whole. Neither the Trust, the Company nor any of its

subsidiaries has received any notice of infringement, misappropriation or conflict from any third party as to such material Trade Rights which has not been resolved or disposed of and to the Trust's and the Company's knowledge neither the Trust, the Company nor any of the Company's subsidiaries has infringed, misappropriated or otherwise conflicted with material Trade Rights of any third parties, which infringement, misappropriation or conflict would have a Material Adverse Effect.

(xxvi) No statement, representation, warranty or covenant made by the Company in this Agreement or made in any certificate or document required by this Agreement to be delivered to will be, when made, inaccurate, untrue or incorrect.

(xxvii) Neither the Company nor its subsidiaries nor, to the Company's knowledge, any employee or agent of the Company or its subsidiaries has made any payment of funds of the Company or its subsidiaries or received or retained any funds in violation of any law, rule or regulation.

(xxviii) Since the respective dates as of which information is given in the Registration Statement, as it may be amended or supplemented, (A) there has not been any material adverse change, or any development involving a prospective material adverse change, in or affecting the condition, financial or otherwise, of the Company and the subsidiaries taken as a whole, or the business affairs, management, financial position, shareholders' equity or results of operations of the Trust, the Company and the Company's subsidiaries, taken as a whole, whether or not occurring in the ordinary course of business, including, without limitation, any material increase in the amount or number of classified assets of the Banks, any decrease in net interest margin for any month to a level below 3.25%, or any material decrease in the volume of loan originations, the amount of deposits or the amount of loans, (B) there has not been any transaction not in the ordinary course of business entered into by the Trust, the Company or any of the Company's subsidiaries which is material to the Trust, the Company and the Company's subsidiaries, taken as a whole, other than transactions described or contemplated in the Registration Statement, (C) the Trust, the Company and the Company's subsidiaries have not incurred any material liabilities or obligations, which are not in the ordinary course of business or which could result in a material reduction in the future earnings of the Trust, the Company and the Company's subsidiaries, taken as a whole, (D) the Company and the Company's subsidiaries have not sustained any material loss or interference with their respective businesses or properties from fire, flood, windstorm, accident or other calamity, whether or not covered by insurance, (E) except as described or contemplated in the Prospectus, since December 31, 2000, there has not been any material change in the capital stock of the Company or the Company's subsidiaries, or any material increase in the short-term or long-term debt (including capitalized lease obligations) of the Company and the Company's subsidiaries, taken as a whole, and (F) except as described or contemplated in the Prospectus, since December 31, 2000, there has not been any declaration or payment of any dividends or any distributions of any kind with respect to the capital stock of the Company.

(xxix) Other than a Certificate of Trust filed with the Secretary of State of Delaware on May 15, 2001, there are no required licenses, approvals, certificates and permits from governmental and regulatory authorities, foreign and domestic, which are necessary to the conduct of its business as described in the Prospectus. The Company has all necessary approvals of the Federal Reserve to own the stock of its subsidiaries. None of the Trust, the Company or any of the Company's subsidiaries has received notice of or has knowledge of any basis for any proceeding or action relating specifically to the Trust, the Company or any of the Company's subsidiaries for the revocation or suspension of any such consent, authorization, approval, order, license, certificate or permit or any other action or proposed action by any regulatory authority having jurisdiction over the Trust, the Company or any of the Company's subsidiaries that would have a material adverse effect on the Trust, the Company or any of the Company's subsidiaries.

(xxx) The Offerors' registration statement pursuant to Section 12(b) of the Exchange Act with respect to the Preferred Securities, has been declared effective by the Commission and the Preferred Securities have been approved for inclusion on The Nasdaq National Market under the symbol "BUSEP".

(xxxi) The Offerors have not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Preferred Securities other than any Preliminary Prospectus or the Prospectus or other materials permitted by the Act to be distributed by the Company.

(xxxii) The deposit accounts of the Banks are insured by the Federal Deposit Insurance Corporation (the "FDIC") to the fullest extent provided by law. No proceeding for the termination of such insurance is pending or is threatened. Except as described in the Prospectus, neither the Company nor any of its subsidiaries has received or is subject to any directive or order from the Federal Reserve, the FDIC, the Office of Thrift Supervision or the Illinois Office of Banks and Real Estate, or any other regulatory authority to make any material change in the method of conducting their respective businesses that has not been complied with in all material respects.

(xxxiii) Neither the Offerors nor any of their affiliates does any business, directly or indirectly, with the government of Cuba or with any person or entity located in Cuba.

(xxxiv) None of the Trust, the Company or any of the Company's subsidiaries is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or an "investment adviser" within the meaning of the Investment Advisers Act of 1940, as amended.

(xxxv) The Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization;

(B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to records is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xxxvi) Other than as contemplated by this Agreement and as disclosed in the Registration Statement, the Company has not incurred any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(xxxvii) No report or application filed by the Company or any of its subsidiaries with the Federal Reserve, the FDIC, the Office of Thrift Supervision or the Illinois Office of Banks and Real Estate, as of the date it was filed, failed to comply with the applicable requirements of the Federal Reserve, the FDIC, the Office of Thrift Supervision or the Illinois Office of Banks and Real Estate, as the case may be, in any material respect.

(xxxviii) The proceeds from the sale of the Preferred Securities will constitute "Tier 1" capital (as defined in 12 C.F.R. Part 325), subject to applicable regulatory restrictions on the amount thereof that can be included in Tier 1 capital.

(b) Any certificate signed by or on behalf of the Trust or the Company and delivered to the Underwriters or counsel to the Underwriters shall be deemed to be a representation and warranty of the Trust or the Company to each Underwriter as to the matters covered thereby.

Section 2. Purchase, Sale and Delivery of Preferred Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Trust agrees to issue and sell to each Underwriter, and each of the Underwriters agrees, severally and not jointly, to purchase from the Trust, at a purchase price of \$10.00 per security, the number of Firm Securities set forth opposite the name of such Underwriter in Schedule A hereto.

In addition, on the basis of the representations, warranties and covenants herein contained and subject to the terms and conditions herein set forth, the Trust hereby grants to the several Underwriters an option to purchase, at their election, up to 300,000 Option Securities at a price of \$10.00 per security, for the sole purpose of covering overallocments in the sale of the Firm Securities. The option granted hereby may be exercised in whole or in part, but only once, and at any time upon written notice given within 30 days after the date of this Agreement, by you, as Representatives of the several Underwriters, to the Trust setting forth the number of Option Securities as to which the several Underwriters are exercising the option and the time and date at which certificates are to be delivered. If any Option Securities are purchased, each Underwriter agrees, severally and not jointly, to purchase that portion of the number of Option Securities as to which such election shall have been exercised (subject to

adjustment to eliminate fractional shares) determined by multiplying such number of Option Securities by a fraction the numerator of which is the maximum number of Option Securities which such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in Schedule A hereto and the denominator of which is the maximum number of Option Securities which all of the Underwriters are entitled to purchase hereunder. If the date of exercise of the option is three or more full days before the Closing Date, the notice of exercise shall set the Closing Date as the Option Closing Date.

As compensation to the Underwriters for their commitments hereunder and in view of the fact that the proceeds of the sale of the Preferred Securities (together with the entire proceeds from the sale by the Trust to the Company of the Common Securities) will be used to purchase the Junior Subordinated Debentures, the Company hereby agrees to pay at the Closing Date, or the Option Closing Date, as the case may be (each as defined below) to the Representatives a commission of \$[ ] per Preferred Security sold by the Trust hereunder on each respective date.

The Firm Securities will be delivered by the Company to the Representatives against payment of the purchase price therefor at the offices of Chapman and Cutler, Chicago, Illinois, or such other location as may be mutually acceptable, at 9:00 a.m., central time on June \_\_, 2001, or such other time and date as the Representatives and the Company may agree upon in writing, such time and date of delivery being herein referred to as the "Closing Date," and, with respect to the Option Securities, at the time and on the date specified by you in the written notice given by you of the Underwriters' election to purchase the Option Securities, or such other time and date as you and the Company may agree upon in writing, such time and date being referred to herein as the "Option Closing Date." The purchase price shall be payable by wire transfer of immediately available funds to an account, such account to be designated by the Trust at least two business days preceding the Closing Date or the Option Closing Date, as the case may be. The Underwriters' commission shall be payable by wire transfer of immediately available funds to an account, such account to be designated by the Underwriters at least two business days preceding the Closing Date or the Option Closing Date, as the case may be. Delivery of the Preferred Securities may be made by credit through full fast transfer to the accounts at The Depository Trust Company designated by you. Certificates representing the Preferred Securities, in definitive form and in such denominations and registered in such names as you may request upon at least two business days' prior notice to the Company shall be prepared and will be made available for checking and packaging, not later than 10:30 a.m., central time, on the business day next preceding the Closing Date or the Option Closing Date, as the case may be, at the offices of Howe Barnes Investments, Inc., 135 South LaSalle Street, Chicago, Illinois 60603, or such other location as may be mutually acceptable.

It is understood that any Underwriter may (but shall not be obligated to) make payment to the Company on behalf of the other Underwriters for the Preferred Securities to be purchased by such Underwriters. Any such payment shall not relieve such other Underwriters of any of their obligations hereunder. Nothing herein contained shall cause the Underwriters to be construed as an unincorporated association or partner with either or both Offerors.

Section 3. Offering by Underwriters. (a) It is understood that the Underwriters propose to make a public offering of the Firm Securities as soon as the Underwriters deem it advisable to do so. The Firm Securities are to be initially offered to the public at the initial public offering price set forth in the Prospectus.

(b) The Representatives, on behalf of the Underwriters, represent and warrant to the Company that the information set forth (i) on the cover page of the Prospectus with respect to price, underwriting compensation and terms of the offering and (ii) under "Underwriting" in the Prospectus was furnished to the Offerors by and on behalf of the Underwriters for use in connection with the preparation of the Registration Statement and is correct and complete in all material respects.

Section 4. Covenants of the Offerors. The Offerors jointly and severally covenant and agree with the Underwriters that:

(a) The Company and the Administrative Trustees on behalf of the Trust will prepare and timely file with the Commission under Rule 424(b) under the Act a Prospectus containing information previously omitted at the time of effectiveness of the Registration Statement in reliance on Rule 430A under the Act, and will not file any amendment to the Registration Statement or supplement to the Prospectus of which the Underwriters shall not previously have been advised and furnished with a copy and as to which the Underwriters shall have reasonably objected in writing promptly after reasonable notice thereof or which is not in compliance with the Act or the rules and regulations thereunder.

(b) If the Offerors elect to rely on Rule 434 of the Act, the Offerors will prepare a term sheet that complies with the requirements of Rule 434. If the Offerors elect not to rely on Rule 434, the Offerors will provide the Underwriters with copies of the form of prospectus, in such numbers as the Underwriters may reasonably request, and file with the Commission such prospectus in accordance with Rule 424(b) of the Act by the close of business in New York City on the second business day immediately succeeding the date of pricing of the offering of the Preferred Securities (the "Pricing Date"). If the Offerors elect to rely on Rule 434, the Offerors will provide the Underwriters with copies of the form of Rule 434 Prospectus, in such numbers as the Underwriters may reasonably request, by the close of business in New York on the business day immediately succeeding the Pricing Date.

(c) The Offerors will advise the Underwriters promptly of any request of the Commission for amendment of the Registration Statement or for supplement to the Prospectus or for any additional information, or of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the use of the Prospectus, of the suspension of the qualification of the Preferred Securities for offering or sale in any jurisdiction, or of the institution or threatening of any proceedings for that purpose, and the Offerors will use their best efforts to prevent the issuance of any such stop order preventing or suspending the use of the Prospectus or

suspending such qualification and to obtain as soon as possible the lifting thereof, if issued.

(d) The Offerors will cooperate with you and your counsel in order to qualify the Preferred Securities for sale under the securities laws of such jurisdictions as the Underwriters may reasonably have designated and to continue such qualifications in effect for so long as the Underwriters may reasonably request for distribution of the Preferred Securities (or obtain exemptions from the application of such laws). The Offerors will, from time to time, prepare and file such statements, reports and other documents as may be requested by the Underwriters for that purpose.

(e) The Offerors will furnish the Underwriters with as many copies of any Preliminary Prospectus as the Underwriters may reasonably request and, during the period when delivery of a prospectus is required under the Act, the Offerors will furnish the Underwriters with as many copies of the Prospectus in final form, or as thereafter amended or supplemented, as the Underwriters may, from time to time, reasonably request. The Offerors will deliver to the Underwriters, at or before the Closing Date or the Option Closing Date, as the case may be, two signed copies of the Registration Statement and all amendments thereto including all exhibits filed therewith, together with the Incorporated Documents, and will deliver to the Underwriters such number of conformed copies of the Registration Statement, without exhibits, and of all amendments thereto, together with the Incorporated Documents, as the Underwriters may reasonably request.

(f) If at any time when a prospectus relating to the Preferred Securities is required to be delivered under the Act any event occurs as a result of which the Prospectus, including any amendments or supplements, would include an untrue statement of a material fact, or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Prospectus, including any amendments or supplements thereto and including any revised prospectus which the Offerors propose for use by the Underwriters in connection with the offering of the Preferred Securities which differs from the prospectus on file with the Commission at the time of effectiveness of the Registration Statement, whether or not such revised prospectus is required to be filed pursuant to Rule 424(b) to comply with the Act, the Offerors promptly will advise you thereof and will promptly prepare and file with the Commission an amendment or supplement which will correct such statement or omission or an amendment which will effect such compliance; and, in case any Underwriter is required to deliver a prospectus nine months or more after the effective date of the Registration Statement, the Offerors upon request, but at the expense of such Underwriter, will prepare promptly such prospectus or prospectuses as may be necessary to permit compliance with the requirements of Section 10(a)(3) of the Act.



(g) Not later than September 30, 2002, the Company will make generally available to its security holders an earnings statement (which need not be audited) covering a period of at least 12 months beginning after the effective date of the Registration Statement, which will satisfy the provisions of the last paragraph of Section 11(a) of the Act.

(h) During the period of five years hereafter, the Company will furnish you with a copy (i) as soon as practicable after the filing thereof, of each report filed by the Company with the Commission, any securities exchange or the NASD; (ii) as soon as practicable after the release thereof, of each material press release in respect of the Company; and (iii) as soon as available, of each report of the Company mailed to stockholders.

(i) The Offerors will use the net proceeds received by it from the sale of the Preferred Securities in the manner specified in the Prospectus.

(j) If, at the time of effectiveness of the Registration Statement, any information shall have been omitted therefrom in reliance upon Rule 430A and/or Rule 434, then on the Pricing Date, the Offerors will prepare, and file or transmit for filing with the Commission in accordance with such Rule 430A, Rule 424(b) and/or Rule 434, copies of an amended Prospectus, or, if required by such Rule 430A and/or Rule 434, a post-effective amendment to the Registration Statement (including an amended Prospectus), containing all information so omitted. If required, the Offerors will prepare and file, or transmit for filing, a Rule 462(b) Registration Statement not later than the date of the execution of the Pricing Agreement. If a Rule 462(b) Registration Statement is filed, the Offerors shall make payment of, or arrange for payment of, the additional registration fee owing to the Commission required by Rule 111.

(k) The Offerors will comply with all registration, filing and reporting requirements of the Exchange Act and The Nasdaq National Market.

Section 5. Costs and Expenses. The Offerors will pay (directly or by reimbursement) all costs, expenses and fees incident to the performance of the obligations of the Offerors under this Agreement, including, without limiting the generality of the foregoing, the following: accounting fees of the Offerors; the fees and disbursements of counsel for the Offerors; the cost of preparing, printing and filing of the Registration Statement, Preliminary Prospectuses and the Prospectus and any amendments and supplements thereto and the printing, mailing and delivery to the Underwriters and dealers of copies thereof and of this Agreement, the Selected Dealers Agreement, any blue sky memorandum, if deemed necessary by the Underwriters, after consultation with the Offerors, and any supplements or amendments thereto (excluding, except as provided below, fees and expenses of counsel to the Underwriters); the filing fees of the Commission; the filing fees incident to securing any required review by NASD of the terms of the sale of the Preferred Securities; the fees and expenses of the Indenture Trustee, including the fees and disbursements of counsel for the Indenture

Trustee in connection with the Indenture and Junior Subordinated Debentures; the fees and expenses of the Property Trustee and the Delaware Trustee, including the fees and disbursements of counsel for the Property Trustee and the Delaware Trustee in connection with the Trust Agreement and the Certificate of Trust; the fees and expenses of the Guarantee Trustee, including the fees and disbursements of counsel for the Guarantee Trustee in connection with the Guarantee and Guarantee Agreement; listing fees, if any, transfer taxes and the expenses, including the fees and disbursements of counsel for the Underwriters, incurred in connection with the qualification of the Preferred Securities under state securities or blue sky laws (which shall not exceed \$2,000); the fees and expenses incurred in connection with the listing of the Preferred Securities on The Nasdaq National Market; the costs of preparing certificates representing Junior Subordinated Debentures or Preferred Securities; the costs and fees of any registrar or transfer agent and all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section 5. The Offerors shall not be required to pay for any of the Underwriters' expenses (other than those related to qualification of the Preferred Securities under state securities or blue sky laws which shall be paid by the Offerors as provided above) except that, if this Agreement shall not be consummated because the conditions in Section 6 hereof are not satisfied, or because this Agreement is terminated by the Underwriters pursuant to Section 9 hereof, or by reason of any failure, refusal or inability on the part of the Offerors to perform any undertaking or satisfy any condition of this Agreement or to comply with any of the terms hereof on either of their parts to be performed, unless such failure to satisfy said condition or to comply with said terms shall be due to the default or omission of any Underwriter, then the Offerors promptly upon request by the Underwriters shall reimburse the Underwriters for all actual, accountable out-of-pocket expenses, including fees and disbursements of counsel reasonably incurred in connection with investigating, marketing and proposing to market the Preferred Securities or in contemplation of performing their obligations hereunder, up to \$10,000 but the Offerors shall not in any event be liable to any of the Underwriters for damages on account of loss of anticipated profits from the sale by them of the Preferred Securities.

Section 6. Conditions of Obligations of the Underwriters. The several obligations of the Underwriters to purchase the Firm Securities on the Closing Date and the Option Securities, if any, on the Option Closing Date are subject to the condition that all representations and warranties of the Offerors contained herein are true and correct, at and as of the Closing Date or the Option Closing Date, as the case may be, and the condition that each Offeror shall have performed all of its covenants and obligations hereunder and to the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 4(a) hereof; no stop order suspending the effectiveness of the Registration Statement, as amended from time to time, or any part thereof shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the Commission; and all requests for

additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the Underwriters.

(b) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion of Chapman and Cutler, counsel for the Offerors, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters, to the effect that:

(i) (A) the Company is validly existing as a corporation in good standing under the laws of the State of Nevada with corporate power and authority to own its properties and conduct its business as described in the Prospectus; and, to the best of such counsel's knowledge the Company is duly qualified to do business as a foreign corporation under the corporation laws of, and is in good standing as such in, every jurisdiction where such qualification is required except where the failure so to qualify would not have a material adverse effect upon the condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole;

(B) an opinion to the same general effect as clause (A) of this subparagraph (i) in respect of each non-bank subsidiary of the Company;

(ii) the Company owns directly or indirectly 100 percent of the outstanding capital stock of each subsidiary;

(iii) since 1998, the issued and outstanding capital stock of the Company has been duly authorized and validly issued and is fully paid and nonassessable;

(iv) the Registration Statement has become effective under the Act, and, to the best knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or contemplated under the Act, and the Registration Statement (including the information deemed to be part of the Registration Statement at the time of effectiveness pursuant to Rule 430A(b) and/or Rule 434, if applicable), the Prospectus and each amendment or supplement thereto (except for the financial statements and other statistical or financial data included therein as to which such counsel need express no opinion and except for the parts of the registration statement which constitute the Form T-1 under the Trust Indenture Act as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act; all documents incorporated by reference in the Prospectus, when they were filed with the Commission, complied as to form in all material respects with the requirements of the Exchange Act; and such counsel have no reason to believe that any of such documents, when they were so filed, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which such statements were made when such documents were so filed, not misleading (such counsel need express no opinion as to the financial statements or other financial or statistical data contained in any such document); such counsel have no reason to believe that either the

Registration Statement (including the information deemed to be part of the Registration Statement at the time of effectiveness pursuant to Rule 430A(b) and/or Rule 434, if applicable), or the Registration Statement as amended (except as aforesaid), as of their respective effective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus as amended or supplemented, if applicable, as of the issue date and as of the Closing Date or the Option Closing Date, as the case may be, contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made (except for the financial statements and other statistical or financial data included therein as to which such counsel need express no opinion); and such counsel does not know of any legal or governmental proceedings pending or threatened required to be described in the Prospectus which are not described as required, nor of any contracts or documents of a character required to be described in the Registration Statement or Prospectus or to be filed as exhibits to the Registration Statement which are not described or filed, as required;

(v) the statements under the captions "Description of the Preferred Securities," "Description of the Debentures," "Book-Entry Issuance," "Description of the Guarantee," "Relationship Among the Preferred Securities, the Debentures and the Guarantee," "Material Federal Income Tax Consequences" and "ERISA Considerations" in the Prospectus, insofar as such statements constitute a summary of documents referred to therein or matters of law, are accurate summaries and fairly present, in all material respects, the information called for with respect to such documents and matters;

(vi) the holders of the Company's outstanding securities are not entitled to any preemptive or other rights to subscribe for the Junior Subordinated Debentures or the Preferred Securities under the Company's bylaws and, to the knowledge of such counsel, no such rights exist under any other agreement or arrangement;

(vii) all of the issued and outstanding Common Securities of the Trust are owned by the Company and, to the best of such counsel's knowledge, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equitable right;

(viii) the Trust Agreement, the Indenture and the Guarantee have been duly qualified under the Trust Indenture Act;

(ix) the Junior Subordinated Debentures are in the form contemplated by the Indenture, have been duly authorized, executed and delivered by the Company and, when authenticated by the Indenture Trustee in the manner provided for in the Indenture and delivered against payment therefor, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy,

insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity;

(x) the Junior Subordinated Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) of the Company;

(xi) to the best of such counsel's knowledge and information after due inquiry, (A) the Trust is not required to be authorized to do business in any jurisdiction other than Delaware, except where the failure to be so authorized would not have a material adverse effect on the Trust's condition (financial or otherwise) or results of operations taken as a whole; and (B) the Trust is not a party to or otherwise bound by any material agreement other than those described in the Prospectus;

(xii) the Trust Agreement has been duly executed and delivered by the Administrative Trustees;

(xiii) the Company has full corporate power and authority and the Trust has full trust power and authority to enter into this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement, as applicable, and to issue the Junior Subordinated Debentures and to effect the transactions contemplated by this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement, as applicable, and each of this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement and the Expense Agreement have been duly authorized, executed and delivered by the Company and the Trust, as applicable, and constitutes a valid, legal and binding obligation of the Company and the Trust, as applicable, enforceable in accordance with its terms (except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity). The execution, delivery and performance of this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement, the Preferred Securities, the Common Securities, the Junior Subordinated Debentures and the Expense Agreement and the consummation of the transactions herein or therein contemplated will not, to the best of such counsel's knowledge, result in a breach or violation of any of the terms and provisions of, or constitute a default under, any statute, rule or regulation (except that such counsel need express no opinion regarding any blue sky or state securities laws), any lease, contract, indenture, mortgage, loan agreement or other agreement or instrument known to such counsel to which the Company, the Trust or any of the Company's subsidiaries is a party or by which it is bound or to which any of its property is subject, the Company's or any of its subsidiaries' charter or bylaws, or the Certificate of Trust or any permit, judgment, order or decree known to such counsel of any court or governmental agency or body having jurisdiction over the Company, the Trust or any of the Company's subsidiaries or any of their respective properties, except for any breach, violation or default which would not have a material adverse effect on the Company or the Trust; and no consent, approval, authorization, order of,

designation, declaration or filing by or with, any court or any regulatory, administrative or governmental agency or body is required for the execution, delivery and performance of this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreement, the Expense Agreement, the Common Securities, the Preferred Securities, or the Junior Subordinated Debentures, or for the consummation of the transactions contemplated hereby or thereby (other than as may be required by federal or state laws governing banks or bank holding companies, the NASD, or by state securities and blue sky laws, as to which such counsel need express no opinion), including the issuance or sale of the Junior Subordinated Debentures by the Company and the Common Securities and Preferred Securities by the Trust, except (A) such as may be required under the Act, which have been obtained or made, and (B) the qualification of the Trust Agreement, the Guarantee Agreement and the Indenture under the Trust Indenture Act and the regulations thereunder, all of which have been effected. The filing of the Registration Statement and the registration of the Junior Subordinated Debentures, the Guarantee and the Preferred Securities under the Act does not give rise to any rights for or relating to the registration of any shares of capital stock or other securities of the Company;

(xiv) neither the Company nor the Trust is, and immediately upon completion of the sale of Preferred Securities contemplated hereby, neither the Company nor the Trust will be, an "investment company" or a company "controlled" by an investment company under the Investment Company Act of 1940, as amended;

(xv) Busey Bank is validly existing as an Illinois banking corporation in good standing under the laws of the State of Illinois and Busey Bank fsb is a federally chartered savings bank in good standing under the laws of the United States, each with power and authority to own its respective properties and conduct its respective business as described in the Prospectus;

(xvi) no Capital Treatment Event (as defined in the Indenture) has occurred; and

(xvii) the Offerors satisfy all of the requirements of the Act for use of Form S-3 for the offering of Preferred Securities contemplated by this Agreement.

In rendering such opinion, such counsel may state that insofar as their opinion under clause (iv) above relates to the accuracy and completeness of the Prospectus and Registration Statement, including the Incorporated Documents, it is based upon a general review with the Offerors' representatives and independent accountants of the information contained therein, without independent verification by such counsel of the accuracy or completeness of such information. Such counsel may also rely upon the opinions of other competent counsel and, as to factual matters, on certificates of officers of the Offerors and of federal or state agencies or officials, in which case their opinion is to state that they are so doing and copies of said opinions or certificates are to be attached to the opinion unless said opinions or certificates (or,

in the case of certificates, the information therein) have been furnished to the Representatives in other form.

(c) The Underwriters shall have received on the Closing Date and the Option Closing Date, as the case may be, the opinion of Chapman and Cutler, dated the Closing Date or the Option Closing Date, addressed to the Underwriters, to the effect that:

(i) under current law, the Trust will be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation; accordingly, for United States federal income tax purposes each beneficial owner of Preferred Securities will be treated as owning an undivided beneficial interest in the Junior Subordinated Debentures, and stated interest on the Junior Subordinated Debentures generally will be included in income by a holder of Capital Securities at the time such interest income is paid or accrued in accordance with such holder's regular method of tax accounting; and

(ii) for federal income tax purposes, (a) the Junior Subordinated Debentures will constitute indebtedness of the Company and (b) the interest on the Junior Subordinated Debentures will be deductible by the Company on an economic accrual basis in accordance with Section 163(e) of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.163-7.

(d) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion of Richards, Layton & Finger, P.A., counsel to Wilmington Trust Company, as Property Trustee under the Trust Agreement, Indenture Trustee under the Indenture, and Guarantee Trustee under the Guarantee Agreement, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters, to the effect that:

(i) Wilmington Trust Company is duly incorporated and is validly existing in good standing as a banking corporation under the laws of the State of Delaware;

(ii) Wilmington Trust Company has the power and authority to execute, deliver and perform its obligations under the Trust Agreement, the Indenture and the Guarantee Agreement;

(iii) each of the Trust Agreement, the Indenture and the Guarantee Agreement has been duly authorized, executed and delivered by Wilmington Trust Company and constitutes a legal, valid and binding obligation of Wilmington Trust Company, enforceable against Wilmington Trust Company, in accordance with its terms;

(iv) the execution, delivery and performance by Wilmington Trust Company of the Trust Agreement, the Indenture and the Guarantee Agreement do not conflict with or constitute a breach of the charter or bylaws of Wilmington Trust Company; and

(v) no consent, approval or authorization of, or registration with or notice to, any governmental authority or agency of the State of Delaware or the United States of America governing the banking or trust powers of Wilmington Trust Company is required for the execution, delivery or performance by Wilmington Trust Company of the Trust Agreement, the Indenture and the Guarantee Agreement.

(e) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion of Richards, Layton & Finger, as special Delaware counsel for the Offerors that:

(i) the Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Act, and all filings required as of the date hereof under the Delaware Act with respect to the creation and valid existence of the Trust as a business trust have been made;

(ii) under the Trust Agreement and the Delaware Act, the Trust has the trust power and authority to own property and to conduct its business, all as described in the Prospectus;

(iii) the Trust Agreement constitutes a valid and binding obligation of the Company, the Property Trustee and each of the Administrative Trustees, and is enforceable against the Company, the Property Trustee and each of the Administrative Trustees in accordance with its terms;

(iv) under the Trust Agreement and the Delaware Act, the Trust has the trust power and authority (A) to execute and deliver, and to perform its obligations under, this Agreement, and (B) to issue, and to perform its obligations under, the Preferred Securities and the Common Securities;

(v) under the Trust Agreement and the Delaware Act, the execution and delivery by the Trust of this Agreement, and the performance by the Trust of its obligations under this Agreement, have been duly authorized by all necessary trust action on the part of the Trust;

(vi) under the Delaware Act, the certificate attached to the Trust Agreement as Exhibit D is an appropriate form of certificate to evidence ownership of the Preferred Securities. The Preferred Securities and the Common Securities have been duly authorized by the Trust Agreement and are duly and validly issued and, subject to the qualifications hereinafter expressed in this paragraph (vi), fully paid and non-assessable undivided beneficial interests



in the assets of the Trust. The respective holders of the Preferred Securities and the Common Securities, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. Such counsel may note that the respective holders of the Preferred Securities and the Common Securities may be obligated, pursuant to the Trust Agreement, to make certain payments under the Trust Agreement;

(vii) under the Trust Agreement and the Delaware Act, the issuance of the Preferred Securities and the Common Securities is not subject to preemptive or similar rights; and

(viii) the issuance and sale by the Trust of the Preferred Securities and the Common Securities, the purchase by the Trust of the Junior Subordinated Debentures, the execution, delivery and performance by the Trust of this Agreement and the Guarantee Agreement, the consummation by the Trust of the transactions contemplated by this Agreement and compliance by the Trust with its obligations under this Agreement do not violate (A) any of the provisions of the Certificate of Trust or the Trust Agreement or (B) any applicable Delaware law or Delaware administrative regulations.

(f) The Underwriters shall have received from Barack Ferrazzano Kirschbaum Perlman & Nagelberg, Chicago, Illinois, counsel for the Underwriters, an opinion dated the Closing Date or the Option Closing Date, as the case may be, with respect to the formation of the Trust, the validity of the Preferred Securities, the Indenture, the Trust Agreement, the Guarantee Agreement, the Expense Agreement, this Agreement, the Registration Statement, the Prospectus, and other related matters as the Underwriters may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

(g) The Underwriters shall have received on the date hereof, the Closing Date and, if applicable, the Option Closing Date, a signed letter, dated as of the date hereof, the Closing Date or the Option Closing Date, as the case may be, respectively, in form and substance satisfactory to the Underwriters, from McGladrey & Pullen, LLP to the effect that they are independent public accountants with respect to the Trust, the Company and the Company's subsidiaries within the meaning of the Act and the related rules and regulations and containing statements and information of the type ordinarily included in accountants' "comfort letters" to Underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus (and the Incorporated Documents).

(h) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date or the Option Closing Date, as the case may be, there shall not have been any change or any development involving a reasonably foreseeable change, in or

affecting the general affairs, management, financial position, shareholders' equity or results of operations of the Offerors otherwise than as set forth or contemplated in the Prospectus, the effect of which, in your reasonable judgment, is material and adverse to the Offerors and makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Preferred Securities being delivered at the Closing Date, or the Option Closing Date, as the case may be, on the terms and in the manner contemplated in the Prospectus.

(i) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, a certificate or certificates of the chief executive officer and the principal financial officer of the Company, to the effect that, as of the Closing Date or the Option Closing Date, as the case may be, each of them severally represents as follows:

(i) The Prospectus was filed with the Commission pursuant to Rule 424(b) within the applicable period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 4 of this Agreement; no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for such purpose have been initiated or are, to his knowledge, threatened by the Commission.

(ii) The representations and warranties of the Company set forth in Section 1 of this Agreement are true and correct at and as of the Closing Date or the Option Closing Date, as the case may be, and the Company has performed all of its obligations under this Agreement to be performed at or prior to the Closing Date or the Option Closing Date, as the case may be.

(j) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, a certificate or certificates of the Administrative Trustees, to the effect that, as of the Closing Date or the Option Closing Date, as the case may be, each of them severally represents as follows:

(i) The Prospectus was filed with the Commission pursuant to Rule 424(b) within the applicable period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 4 of this Agreement; no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for such purpose have been initiated or are, to his knowledge, threatened by the Commission.

(ii) The representations and warranties of the Trust set forth in Section 1 of this Agreement are true and correct at and as of the Closing Date or the Option Closing Date, as the case may be, and the Trust has performed all of its obligations under this Agreement to be performed at or prior to the Closing Date or the Option Closing Date, as the case may be.

(k) The Offerors shall have furnished to the Underwriters such further certificates and documents as the Underwriters may reasonably have requested, including with respect to (i) the treatment of the Junior Subordinated Debentures as indebtedness of the Company and (ii) the deductibility of the interest on the Junior Subordinated Debenture.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects reasonably satisfactory to the Underwriters and to Barack Ferrazzano Kirschbaum Perlman & Nagelberg, counsel for the Underwriters.

If any of the conditions hereinabove provided for in this Section 6 shall not have been fulfilled when and as required by this Agreement to be fulfilled, the obligations of the Underwriters hereunder may be terminated by the Underwriters by notifying the Company and the Trust of such termination in writing or by telegram at or prior to the Closing Date or the Option Closing Date, as the case may be. In such event, the Offerors and the Underwriters shall not be under any obligation to each other (except to the extent provided in Sections 5 and 7 hereof).

#### Section 7. Indemnification.

(a) The Offerors jointly and severally agree to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Act or the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which such Underwriter or such controlling person may become subject under the Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Offerors), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are (i) based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, including the information deemed to be part of the Registration Statement at the time of effectiveness pursuant to Rule 430A and/or Rule 434, if applicable, any Preliminary Prospectus, the Prospectus, the Incorporated Documents or any amendment or supplement thereto, or (ii) arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; and will reimburse each Underwriter and each such controlling person for any legal or other expenses reasonably incurred by such Underwriter or such controlling person in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Offerors will not be liable in any such case to the extent that (A) any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Prospectus, the Incorporated Documents or any amendment or supplement thereto in reliance upon and in conformity with written information furnished to the Offerors by or on behalf of any Underwriter, specifically for use therein; or (B) if such statement or omission was contained or made in any Preliminary Prospectus and corrected in

the Prospectus and (1) any such loss, claim, damage or liability suffered or incurred by any Underwriter (or any person who controls any Underwriter) resulted from an action, claim or suit by any person who purchased Preferred Securities which are the subject thereof from such Underwriter in the offering and (2) such Underwriter failed to deliver or provide a copy of the Prospectus to such person at or prior to the confirmation of the sale of such Preferred Securities in any case where such delivery is required by the Act. In addition to its other obligations under this Section 7(a), the Offerors agree that, as an interim measure during the pendency of any claim, action, investigation, inquiry or other proceeding arising out of or based upon any statement or omission, or any alleged statement or omission, described in this Section 7(a), it will reimburse the Underwriters on a quarterly basis for all reasonable legal and other expenses incurred in connection with investigating or defending any such claim, action, investigation, inquiry or other proceeding, notwithstanding the absence of a judicial determination as to the propriety and enforceability of the Offerors' obligation to reimburse the Underwriters for such expenses and the possibility that such payments might later be held to have been improper by a court of competent jurisdiction. To the extent that any such interim reimbursement payment is held by a court of competent jurisdiction to have been improper, each recipient thereof will promptly return it to the Offerors. This indemnity agreement will be in addition to any liability which the Offerors may otherwise have.

(b) Each Underwriter will severally indemnify and hold harmless the Offerors, the trustees, and the Company's directors, each of the Company's officers who signed the Registration Statement and each person, if any, who controls either Offeror within the meaning of the Act or the Exchange Act, against any losses, claims, damages or liabilities to which the Offerors, or any such director, officer or controlling person may become subject under the Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue or alleged untrue statement of any material fact contained in the Registration Statement, any Preliminary Prospectus, the Prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Prospectus, or any amendment or supplement thereto in reliance upon any written information furnished to the Offerors by such Underwriter specifically for use in the preparation thereof; and will reimburse any legal or other expenses reasonably incurred by the Offerors, or any such director, officer or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action. In addition to their other obligations under this Section 7(b), each Underwriter agrees that, as an interim measure during the pendency of any claim, action, investigation, inquiry or other proceeding arising out of or based upon any statement or omission, or any alleged statement or omission, described in this Section 7(b), the Underwriters will reimburse the Offerors on a quarterly basis for all reasonable legal and other expenses incurred in connection with investigating or defending any such claim, action, investigation, inquiry or other proceeding, notwithstanding the absence of a

judicial determination as to the propriety and enforceability of the Underwriters' obligation to reimburse the Offerors for such expenses and the possibility that such payments might later be held to have been improper by a court of competent jurisdiction. To the extent that any such interim reimbursement payment is held by a court of competent jurisdiction to have been improper, each recipient thereof will promptly return it to the Underwriters. This indemnity agreement will be in addition to any liability which the Underwriters may otherwise have.

(c) The Company agrees to indemnify the Trust against all loss, liability, claim damage and expense whatsoever, which may become due from the Trust under paragraph (a).

(d) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party except to the extent that the indemnifying party was prejudiced by such failure to notify. In case any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate in, and, to the extent that it may wish, jointly with all other indemnifying parties similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, or the indemnified and indemnifying parties may have conflicting interests which would make it inappropriate for the same counsel to represent both of them, the indemnified party or parties shall have the right to select separate counsel to assume such legal defense and otherwise to participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed such counsel in connection with the assumption of legal defense in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel, approved by the Representatives in the case of paragraph (a) representing all indemnified parties not having different or additional defenses or potential conflicting interests among themselves who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been

sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability arising out of such proceeding.

(e) If the indemnification provided for in this Section is unavailable to an indemnified party under paragraphs (a) or (b) hereof in respect of any losses, claims, damages or liabilities referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Offerors on the one hand and the Underwriters on the other from the offering of the Preferred Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Offerors on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Offerors on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Offerors bears to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the Prospectus. The relative fault of the Offerors and the Underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Offerors or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages and liabilities referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim.

The Offerors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Preferred Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations to contribute pursuant to this Section are several in proportion to their respective underwriting commitments and not joint.

(f) The provisions of this Section shall survive any termination of the Agreement.

Section 8. Default of Underwriters. It shall be a condition to the agreement and obligation of the Offerors to sell and deliver the Preferred Securities hereunder, and of each Underwriter to purchase the Preferred Securities hereunder, that, except as hereinafter in this paragraph provided, each of the Underwriters shall purchase and pay for all Preferred Securities agreed to be purchased by such Underwriter hereunder upon tender to the Representatives of all such Preferred Securities in accordance with the terms hereof. If an Underwriter defaults in its obligation to purchase Preferred Securities hereunder on the Closing Date or the Option Closing Date, as the case may be, and the aggregate number of Preferred Securities which such defaulting Underwriter agreed but failed to purchase does not exceed 10 percent of the total number of Firm Securities or Option Securities, as the case may be, which the Underwriters are obligated to purchase on the Closing Date or the Option Closing Date, as the case may be, the Representatives may make arrangements satisfactory to the Offerors for the purchase of such Preferred Securities by other persons, including the Representatives, but if no such arrangements are made by such date the nondefaulting Underwriter shall be obligated to purchase the Preferred Securities which such defaulting Underwriter agreed but failed to purchase on such date. If any Underwriter so defaults and the aggregate number of Preferred Securities with respect to which such default occurs is more than the above percentage and arrangements satisfactory to the Representatives and the Offerors for the purchase of such Preferred Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability on the part of the nondefaulting Underwriter or the Offerors, except for the expenses to be paid by the Offerors pursuant to Section 5 hereof and except to the extent provided in Section 7 hereof.

In the event that Preferred Securities to which a default relates are to be purchased by the nondefaulting Underwriter or by another party or parties, the Representatives or the Offerors shall have the right to postpone the Closing Date or the Option Closing Date, as the case may be, for not more than seven business days in order that the necessary changes in the Registration Statement, Prospectus and any other documents, as well as any other arrangements, may be effected. As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

Section 9. Termination. Without limiting the right to terminate this Agreement pursuant to any other provision hereof, this Agreement may be terminated by you prior to the Closing Date or the Option Closing Date, as the case may be, if (i) trading in securities on The Nasdaq National Market shall have been suspended or minimum prices shall have been established on such exchange, or (ii) a banking moratorium shall have been declared by Illinois, New York, or United States authorities, or (iii) there shall have been any material adverse change in financial markets or in political, economic or financial conditions from the date hereof which, in the reasonable opinion of both of the Representatives, either renders it impracticable or inadvisable to proceed with the offering and sale of the Preferred Securities on the terms set forth in the Prospectus or materially and adversely affects the market for the Preferred Securities, or (iv) there shall have been an outbreak of major armed hostilities between the United States and any foreign power which in the reasonable opinion of both of the Representatives makes it impractical or inadvisable to offer or sell the Preferred Securities.

Any termination pursuant to this paragraph shall be without liability on the part of any Underwriter to the Offerors or on the part of the Offerors to any Underwriter (except for expenses to be paid or reimbursed pursuant to Section 7 hereof and except to the extent provided in Section 5 hereof).

Section 10. Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Offerors, the Trustees, any of the Company's officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Offerors or any of its or their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Preferred Securities sold hereunder.

Section 11. Notices. All communications hereunder will be in writing and, if sent to the Underwriters will be mailed, delivered or sent by facsimile transmission and confirmed to you c/o Howe Barnes Investments, Inc., 135 South LaSalle Street, Chicago, Illinois 60603, Attention: Paul A. O'Connor with a copy to John E. Freechack, Esq., Barack Ferrazzano Kirschbaum Perlman & Nagelberg, 333 West Wacker Drive, Suite 2700, Chicago, Illinois 60606; and if sent to the Company will be mailed, delivered or telegraphed and confirmed to the Company, Attention: Douglas C. Mills, at its corporate headquarters with a copy to Stathy Darcy, Esq., Chapman and Cutler, 111 West Monroe, Chicago, Illinois 60603.

Section 12. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors, personal representatives and assigns, and to the benefit of the officers and directors and controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Preferred Securities as such from any of the Underwriters merely by reason of such purchase.

Section 13. Representation of Underwriters. You will act as Representatives for the Underwriters in connection with this financing, and any action under or in respect of this Agreement taken by either of you will be binding upon all the Underwriters.

Section 14. Partial Unenforceability. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other section, paragraph or provision hereof.

Section 15. Miscellaneous. Each provision of this Agreement shall be interpreted in such a manner to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable under any applicable law or rule in any jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability in such jurisdiction or any provision hereof in any other jurisdiction.



This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to us the enclosed duplicates hereof, whereupon it will become a binding agreement among the Offerors and the Underwriters including you, all in accordance with its terms.

Very truly yours,  
FIRST BUSEY CORPORATION

By \_\_\_\_\_  
Douglas C. Mills  
Its Chairman of the Board and  
Chief Executive Officer

FIRST BUSEY CAPITAL TRUST I

By \_\_\_\_\_  
Barbara J. Kuhl  
Its Administrative Trustee

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

HOWE BARNES INVESTMENTS, INC.

STEPHENS INC.

Acting as Representative of the Underwriters named in Schedule A

Acting as Representative of the Underwriters named in Schedule A

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

SCHEDULE A  
SCHEDULE OF UNDERWRITERS

UNDERWRITER -----	NUMBER OF PREFERRED SECURITIES TO BE PURCHASED -----
Howe Barnes Investments, Inc.	
Stephens Inc.	
Total	2,000,000 =====

\* Not including an over-allotment option of up to \$3,000,000 of Preferred Securities.

=====

FIRST BUSEY CORPORATION

and

WILMINGTON TRUST COMPANY,  
as Trustee

INDENTURE

\_\_\_\_\_% SUBORDINATED DEBENTURES DUE 2031

Dated as of June \_\_, 2001

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## CROSS-REFERENCE TABLE

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310(a).....	9.10
310(b).....	9.9, 9.11
310(c).....	Not Applicable
311(a).....	9.14
311(b).....	9.14
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312(a).....	6.1, 6.2(a)
312(b).....	6.2(c)
312(c).....	6.2(c)
313(a).....	6.4(a)
313(b).....	6.4(b)
313(c).....	6.4(a), 6.4(b)
313(d).....	6.4(c)
314(a).....	6.3(a)
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314(c).....	15.7
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315(a).....	9.1(a), 9.3
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316(b).....	7.4(b)
316(c).....	10.1(b)
317(a).....	7.2
317(b).....	5.3
318(a).....	15.9

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

## INDENTURE

Indenture, dated as of June \_\_, 2001, between FIRST BUSEY CORPORATION, a Nevada corporation (the "Company") and WILMINGTON TRUST COMPANY, a Delaware banking corporation duly organized and existing under the laws of the State of Delaware, as trustee (the "Trustee");

## RECITAL

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of securities to be known as its \_\_\_% Subordinated Debentures due 2031 (hereinafter referred to as the "Debentures"), the form and substance of such Debentures and the terms, provisions and conditions thereof to be set forth as provided in this Indenture;

WHEREAS, First Busey Capital Trust I, a Delaware statutory business trust (the "Trust"), has offered to the public \$70,000,000 aggregate liquidation amount of its Preferred Securities (as defined herein) (\$23,000,000 if the Underwriters exercise their Option (as defined herein)) and proposes to invest the proceeds from such offering, together with the proceeds of the issuance and sale by the Trust to the Company of \$618,560 aggregate liquidation amount of its Common Securities (as defined herein) (\$711,340 if the Underwriters exercise their Option), in \$20,618,560 aggregate principal amount of the Debentures (\$23,711,340 if the Underwriters exercise their Option);

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

WHEREAS, all requirements necessary to make this Indenture a valid instrument in accordance with its terms, and to make the Debentures, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this Indenture have been duly authorized in all respects;

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

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

NOW, THEREFORE, in consideration of the premises and the purchase of the Debentures by the holders thereof, it is mutually covenanted and agreed as follows for the equal and ratable benefit of the holders of the Debentures:

## ARTICLE I

## DEFINITIONS

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

"Accelerated Maturity Date" means if the Company elects to accelerate the Maturity Date in accordance with Section 2.2(b), the date selected by the Company which is prior to the Scheduled Maturity Date, but is after June \_\_, 2006.

"Additional Junior Indebtedness" means, without duplication, any indebtedness, liabilities or obligations of the Company, or any Affiliate of the Company, (a) pursuant to the issuance of debt securities (or guarantees in respect of debt securities) initially issued to any trust, or a trustee of a trust, partnership or other entity affiliated with the Company that is, directly or indirectly, a financing vehicle of the Company or any Affiliate of the Company in connection with the issuance by that entity of preferred securities or other securities that are intended to qualify for Tier 1 capital treatment (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company, other than the Debentures; provided, however, that the inability of the Company to treat all or any portion of the Additional Junior Indebtedness as Tier 1 capital shall not disqualify it as Additional Junior Indebtedness if such inability results from the Company having cumulative preferred stock, minority interests in consolidated subsidiaries, or any other class of security or interest which the Federal Reserve now or may hereafter accord Tier 1 capital treatment (including the Debentures) in excess of the amount which may qualify for treatment as Tier 1 capital under applicable capital adequacy guidelines of the Federal Reserve, (b) that is junior or otherwise subordinate in right of payment to Senior Indebtedness of the Company, and (c) that has a maturity or is otherwise due and payable by the Company on a date twelve (12) months or more after its date of original issuance, other than the Debentures.

"Additional Payments" shall have the meaning set forth in Section 2.5(c).

"Additional Senior Obligations" means all indebtedness of the Company whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements; provided, however, that Additional Senior Obligations does not include claims in respect of Senior Debt or Subordinated Debt or obligations which, by their

terms, are expressly stated to be not superior in right of payment to the Debentures or to rank pari passu in right of payment with the Debentures. For purposes of this definition, "claim" shall have the meaning assigned thereto in Section 101(4) of the United States Bankruptcy Code of 1978, as amended.

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

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

"Authenticating Agent" means an authenticating agent with respect to the Debentures appointed by the Trustee pursuant to Section 2.12.

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

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

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

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

"Capital Treatment Event" means the receipt by the Company and the Trust of an Opinion of Counsel, rendered by a law firm having a recognized bank regulatory practice within a reasonable period of time after the applicable occurrence, to the effect that, as a result of any amendment to or change (including any announced prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision thereof or therein, or as a result of any official or administrative pronouncement, action or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or, which pronouncement, action or judicial decision is announced on or after the date of issuance of the Preferred Securities under the Trust Agreement, there is more than an insubstantial risk of impairment of the Company's ability to treat the aggregate Liquidation Amount of the Preferred

Securities (or any substantial portion thereof) as "Tier 1 Capital" (or the then equivalent thereof) for purposes of the capital adequacy guidelines of the Federal Reserve, as then in effect and applicable to the Company.

"Certificate" means a certificate signed by the principal executive officer, the principal financial officer, the principal accounting officer, the treasurer or any vice president of the Company. The Certificate need not comply with the provisions of Section 15.7.

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

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

"Common Securities" means undivided beneficial interests in the assets of the Trust which rank pari passu with the Preferred Securities; provided, however, that upon the occurrence and during the continuation of an Event of Default, the rights of holders of Common Securities to payment in respect of (a) distributions, and (b) payments upon liquidation, redemption and otherwise, are subordinated to the rights of holders of Preferred Securities.

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

"Compounded Interest" shall have the meaning set forth in Section 4.1.

"Corporate Trust Office" means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Department.

"Coupon Rate" shall have the meaning set forth in Section 2.5(a).

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

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

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

"Debenture Register" shall have the meaning set forth in Section 2.7(b).

"Debenture Registrar" shall have the meaning set forth in Section 2.7(b).

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

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

"Deferred Payments" shall have the meaning set forth in Section 4.1.

"Direct Action" shall have the meaning set forth in Section 7.8.

"Dissolution Event" means that as a result of the occurrence and continuation of a Special Event, the Trust is to be dissolved in accordance with the Trust Agreement and the Debentures held by the Property Trustee are to be distributed to the holders of the Trust Securities issued by the Trust pro rata in accordance with the Trust Agreement.

"Distribution" shall have the meaning set forth in the Trust Agreement.

"Event of Default" shall have the meaning specified in Section 7.1.

"Exchange Act," means the Securities Exchange Act of 1934, as amended, as in effect at the date of execution of this Indenture.

"Extension Period" shall have the meaning set forth in Section 4.1.

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

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

"Governmental Obligations" means securities that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged; or (b) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America that, in either

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

"Herein," "hereof," and "hereunder," and other words of similar import, refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into in accordance with the terms hereof.

"Interest Payment Date" shall have the meaning set forth in Section 2.5(a).

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

"Investment Company Event" means the receipt by the Trust and the Company of an Opinion of Counsel, rendered by a law firm having a recognized tax and securities law practice within a reasonable period of time after the applicable occurrence, to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), the Trust is or shall be considered an "investment company" that is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities under the Trust Agreement.

"Maturity Date" means the date on which the Debentures mature and on which the principal shall be due and payable together with all accrued and unpaid interest thereon including Compounded Interest and Additional Payments, if any.

"Ministerial Action" shall have the meaning set forth in Section 3.2.

"Officers' Certificate" means a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Controller or an Assistant Controller or the Secretary or an Assistant Secretary of the Company that is delivered to the Trustee in accordance with the terms hereof. Each such certificate shall include the statements provided for in Section 15.7, if and to the extent required by the provisions thereof.

"Opinion of Counsel" means an opinion in writing of independent, outside legal counsel for the Company, that is delivered to the Trustee in accordance with the terms hereof. Each such

opinion shall include the statements provided for in Section 15.7, if and to the extent required by the provisions thereof.

"Outstanding," when used with reference to the Debentures, means, subject to the provisions of Section 10.4, as of any particular time, all Debentures theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Debentures theretofore canceled by the Trustee or any Paying Agent, or delivered to the Trustee or any Paying Agent for cancellation or that have previously been canceled; (b) Debentures or portions thereof for the payment or redemption of which money or Governmental Obligations in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent); provided, however, that, if such Debentures or portions of such Debentures are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article III provided, or provision satisfactory to the Trustee shall have been made for giving such notice; and (c) Debentures in lieu of or in substitution for which other Debentures shall have been authenticated and delivered pursuant to the terms of Section 2.7; provided, however, that in determining whether the holders of the requisite percentage of Debentures have given any request, notice, consent or waiver hereunder, Debentures held by the Company or any Affiliate of the Company shall not be included; provided, further, that the Trustee shall be protected in relying upon any request, notice, consent or waiver unless a Responsible Officer of the Trustee shall have actual knowledge that the holder of such Debenture is the Company or an Affiliate thereof.

"Paying Agent" means any paying agent or co-paying agent appointed pursuant to Section 5.3.

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

"Predecessor Debenture" means every previous Debenture evidencing all or a portion of the same debt as that evidenced by such particular Debenture; and, for the purposes of this definition, any Debenture authenticated and delivered under Section 2.9 in lieu of a lost, destroyed or stolen Debenture shall be deemed to evidence the same debt as the lost, destroyed or stolen Debenture.

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

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



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

"Redemption Price" shall have the meaning set forth in Section 3.2.

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

"Scheduled Maturity Date" means June \_\_, 2031.

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

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

"Senior Indebtedness" shall have the meaning set forth in Section 16.1.

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

"Subordinated Debt" means the principal of (and premium, if any) and interest, if any (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company whether or not such claim for post-petition interest is allowed in such proceeding), on Debt (other than the Debentures), whether incurred on or prior

to the date of this Indenture or thereafter incurred, which is by its terms expressly provided to be junior and subordinate to other Debt of the Company (other than the Debentures); provided, however, that Subordinated Debt will not be deemed to include (a) any Debt of the Company which when incurred and without respect to any election under section 1111(b) of the United States Bankruptcy Code of 1978, as amended, was without recourse to the Company, (b) any Debt of the Company owed to any of its subsidiaries, (c) any Debt owed to any employee of the Company, (d) any Debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of such Debt by the holders of the Subordinated Debentures as a result of the subordination provisions of the Indenture would be greater than they otherwise would have been as a result of any obligation of such holders to pay amounts over to the obligees on such trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which such Debt is subject, (e) Debt which constitutes Senior Debt and (f) any Debt of the Company under debt securities (and guarantees in respect of these debt securities) initially issued to any trust, or a trustee of a trust, partnership or other entity affiliated with the Company that is, directly or indirectly, a financing vehicle of the Company in connection with the issuance by that entity of preferred securities or other securities which are intended to qualify for Tier 1 capital treatment.

"Subsidiary" means, with respect to any Person, (a) any corporation at least a majority of whose outstanding Voting Stock shall at the time be owned, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries; (b) any general partnership, limited liability company, joint venture, trust or similar entity, at least a majority of whose outstanding partnership or similar interests shall at the time be owned by such Person, or by one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries; and (c) any limited partnership of which such Person or any of its Subsidiaries is a general partner.

"Tax Event" means the receipt by the Company and the Trust of an Opinion of Counsel, rendered by a law firm having a recognized federal tax and securities law practice within a reasonable amount of time after the applicable occurrence, to the effect that, as a result of any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, or as a result of any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or which pronouncement or decision is announced on or after the date of issuance of the Preferred Securities under the Trust Agreement, there is more than an insubstantial risk that (a) the Trust is, or shall be within 90 days after the date of such Opinion of Counsel, subject to United States federal income tax with respect to income received or accrued on the Debentures; (b) interest payable by the Company on the Debentures is not, or within 90 days after the date of such Opinion of Counsel, shall not be, deductible by the Company, in whole or in part, for United States federal income tax purposes; or (c) the Trust is, or shall be within 90 days after the date of such Opinion of Counsel, subject to more than a de minimis amount of other taxes, duties, assessments or other governmental charges; provided, however, that the Trust or the Company shall have requested and received such an Opinion of Counsel with regard to such matters within a reasonable period of time after the Trust or the Company shall have become aware of the

occurrence or the possible occurrence of any of the events described in clauses (a) through (c) above.

"Trust" means First Busey Capital Trust I, a Delaware statutory business trust.

"Trust Agreement" means the Amended and Restated Trust Agreement, dated as of June \_\_, 2001, of the Trust.

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

"Trust Indenture Act," means the Trust Indenture Act of 1939, as amended, subject to the provisions of Sections 11.1, 11.2, and 12.1, as in effect at the date of execution of this Indenture.

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

"Voting Stock," as applied to stock of any Person, means shares, interests, participations or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of a majority of the directors (or the equivalent) of such Person, other than shares, interests, participations or other equivalents having such power only by reason of the occurrence of a contingency.

## ARTICLE II

### ISSUE, DESCRIPTION, TERMS, CONDITIONS, REGISTRATION AND EXCHANGE OF THE DEBENTURES

Section 2.1. Designation and Principal Amount. There is hereby authorized Debentures designated the "\_\_\_\_ % Subordinated Debentures due 2031," limited in aggregate principal amount up to \$23,711,340, which amount - shall be as set forth in any written order of the Company for the authentication and delivery of Debentures pursuant to Section 2.6.

Section 2.2. Maturity. (a) The Maturity Date shall be either:

(i) the Scheduled Maturity Date; or

(ii) if the Company elects to accelerate the Maturity Date to be a date prior to the Scheduled Maturity Date in accordance with Section 2.2(c), the Accelerated Maturity Date.

(b) The Company may at any time before the day which is 90 days before the Scheduled Maturity Date and after June \_\_, 2006, elect to shorten the Maturity Date only once to the Accelerated Maturity Date provided that the Company has received the prior approval of the

Federal Reserve if then required under applicable capital guidelines, policies or regulations of the Federal Reserve.

(c) If the Company elects to accelerate the Maturity Date in accordance with Section 2.2(b), the Company shall give notice to the Trustee and the Trust (unless the Trust is not the holder of the Debentures, in which case the Trustee will give notice to the holders of the Debentures) of the acceleration of the Maturity Date and the Accelerated Maturity Date at least 30 days and no more than 180 days before the Accelerated Maturity Date; provided, however, that nothing provided in this Section 2.2 shall limit the Company's rights, as provided in Article III hereof, to redeem all or a portion of the Debentures at such time or times on or after June \_\_, 2006, as the Company may so determine, or at any time upon the occurrence of a Special Event.

Section 2.3. Form and Payment. The Debentures shall be issued in fully registered certificated form without interest coupons. Principal and interest on the Debentures issued in certificated form shall be payable, the transfer of such Debentures shall be registrable and such Debentures shall be exchangeable for Debentures bearing identical terms and provisions at the office or agency of the Trustee; provided, however, that payment of interest may be made at the option of the Company by check mailed to the holder at such address as shall appear in the Debenture Register or by wire transfer to an account maintained by the holder as specified in the Debenture Register, provided that the holder provides proper transfer instructions by the regular record date. Notwithstanding the foregoing, so long as the holder of any Debentures is the Property Trustee, the payment of principal of and interest (including Compounded Interest and Additional Payments, if any) on such Debentures held by the Property Trustee shall be made at such place and to such account as may be designated by the Property Trustee.

Section 2.4. [Intentionally Omitted].

Section 2.5. Interest. (a) Each Debenture shall bear interest at a rate of \_\_\_% per annum (the "Coupon Rate") from the original date of issuance of the first Debenture issued under this Indenture until the principal thereof becomes due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the Coupon Rate, compounded quarterly, payable (subject to the provisions of Article IV) quarterly in arrears on March 30, June 30, September 30, and December 30 of each year (each, an "Interest Payment Date"), commencing on September 30, 2001, to the Person in whose name such Debenture or any Predecessor Debenture is registered, at the close of business on the regular record date for such interest installment, which shall be the fifteenth day of the last month of the calendar quarter.

(b) The amount of interest payable for any period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of interest payable for any period shorter than a full quarterly period for which interest is computed shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. In the event that any date on which interest is payable on the Debentures is not a Business Day, then payment of interest payable on such date shall be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately

preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as if made on the date such payment was originally payable.

(c) If, at any time while the Property Trustee is the holder of any Debentures, the Trust or the Property Trustee is required to pay any taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, the Company shall pay as additional payments ("Additional Payments") on the Debentures held by the Property Trustee, such additional amounts as shall be required so that the net amounts received and retained by the Trust and the Property Trustee after paying such taxes, duties, assessments or other governmental charges shall be equal to the amounts the Trust and the Property Trustee would have received had no such taxes, duties, assessments or other government charges been imposed.

Section 2.6. Execution and Authentication. (a) The Debentures shall be signed on behalf of the Company by its Chief Executive Officer, President or one of its Vice Presidents, under its corporate seal attested by its Secretary or one of its Assistant Secretaries. Signatures may be in the form of a manual or facsimile signature. The Company may use the facsimile signature of any Person who shall have been a Chief Executive Officer, President or Vice President thereof, or of any Person who shall have been a Secretary or Assistant Secretary thereof, notwithstanding the fact that at the time the Debentures shall be authenticated and delivered or disposed of such Person shall have ceased to be the Chief Executive Officer, President or a Vice President, or the Secretary or an Assistant Secretary, of the Company (and any such signature shall be binding on the Company). The seal of the Company may be in the form of a facsimile of such seal and may be impressed, affixed, imprinted or otherwise reproduced on the Debentures. The Debentures may contain such notations, legends or endorsements required by law, stock exchange rule or usage. Each Debenture shall be dated the date of its authentication by the Trustee.

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

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

(d) In authenticating such Debentures and accepting the additional responsibilities under this Indenture in relation to such Debentures, the Trustee shall be entitled to receive, and (subject to Section 9.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the form and terms thereof have been established in conformity with the provisions of this Indenture.

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

Section 2.7. Registration of Transfer and Exchange. (a) Debentures may be exchanged upon presentation thereof at the office or agency of the Company designated for such purpose in the Borough of Manhattan, the City of New York, or at the office of the Debenture Registrar, for other Debentures and for a like aggregate principal amount in denominations of integral multiples of \$10, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section 2.7. In respect of any Debentures so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in exchange therefor the Debenture or Debentures that the Debentureholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

(b) The Company shall keep, or cause to be kept, at its office or agency designated for such purpose in the Borough of Manhattan, the City of New York, or at the office of the Debenture Registrar, or such other location designated by the Company a register or registers (herein referred to as the "Debenture Register") in which, subject to such reasonable regulations as the Debenture Registrar (as defined below) may prescribe, the Company shall register the Debentures and the transfers of Debentures as in this Article II provided and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Debentures and transfer of Debentures as herein provided shall initially be the Trustee and thereafter as may be appointed by the Company as authorized by Board Resolution (the "Debenture Registrar"). Upon surrender for transfer of any Debenture at the office or agency of the Company designated for such purpose, the Company shall execute, the Trustee shall authenticate and such office or agency shall deliver in the name of the transferee or transferees a new Debenture or Debentures for a like aggregate principal amount. All Debentures presented or surrendered for exchange or registration of transfer, as provided in this Section 2.7, shall be accompanied (if so required by the Company or the Debenture Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Debenture Registrar, duly executed by the registered holder or by such holder's duly authorized attorney in writing.

(c) No service charge shall be made for any exchange or registration of transfer of Debentures, or issue of new Debentures in case of partial redemption, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.8, Section 3.5(b) and Section 11.4 not involving any transfer.

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

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

Section 2.8. Temporary Debentures. Pending the preparation of definitive Debentures, the Company may execute, and the Trustee shall authenticate and deliver, temporary Debentures (printed, lithographed, or typewritten). Such temporary Debentures shall be substantially in the form of the definitive Debentures in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Debentures, all as may be determined by the Company. Every temporary Debenture shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Debentures. Without unnecessary delay, the Company shall execute and shall furnish definitive Debentures and thereupon any or all temporary Debentures may be surrendered in exchange therefor (without charge to the holders), at the office or agency of the Company designated for the purpose and the Trustee shall authenticate and such office or agency shall deliver in exchange for such temporary Debentures an equal aggregate principal amount of definitive Debentures, unless the Company advises the Trustee to the effect that definitive Debentures need not be authenticated and furnished until further notice from the Company. Until so exchanged, the temporary Debentures shall be entitled to the same benefits under this Indenture as definitive Debentures authenticated and delivered hereunder.

Section 2.9. Mutilated, Destroyed, Lost or Stolen Debentures. (a) In case any temporary or definitive Debenture shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon the Company's request the Trustee (subject as aforesaid) shall authenticate and deliver, a new Debenture bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Debenture, or in lieu of and in substitution for the Debenture so destroyed, lost, stolen or mutilated. In every case the applicant for a substituted Debenture shall furnish to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and the Trustee evidence to their satisfaction of the destruction, loss or theft of the applicant's Debenture and of the ownership thereof. The Trustee shall authenticate any such substituted Debenture and deliver the same upon the written request or authorization of the Chief Executive Officer, President or any Vice President and the Treasurer or any Assistant Treasurer of the Company. Upon the issuance of any substituted Debenture, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Debenture that has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Debenture, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debenture) if the applicant for such payment shall furnish to the Company and the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Debenture and of the ownership thereof.

(b) Every replacement Debenture issued pursuant to the provisions of this Section 2.9 shall constitute an additional contractual obligation of the Company whether or not the mutilated, destroyed, lost or stolen Debenture shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debentures duly issued hereunder. All Debentures shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debentures, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.10. Cancellation. All Debentures surrendered for the purpose of payment, redemption, exchange or registration of transfer shall, if surrendered to the Company or any Paying Agent, be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be canceled by it, and no Debentures shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On request of the Company at the time of such surrender, the Trustee shall deliver to the Company canceled Debentures held by the Trustee. In the absence of such request the Trustee may dispose of canceled Debentures in accordance with its standard procedures and deliver a certificate of disposition to the Company. If the Company shall otherwise acquire any of the Debentures, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Debentures unless and until the same are delivered to the Trustee for cancellation.

Section 2.11. Benefit of Indenture. Nothing in this Indenture or in the Debentures, express or implied, shall give or be construed to give to any Person, other than the parties hereto and the holders of the Debentures (and, with respect to the provisions of Article XVI, the holders of the Senior Indebtedness) any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Debentures (and, with respect to the provisions of Article XVI, the holders of the Senior Indebtedness).

Section 2.12. Authentication Agent. (a) So long as any of the Debentures remain Outstanding there may be an Authenticating Agent for any or all such Debentures, which Authenticating Agent the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Debentures issued upon exchange, transfer or partial redemption thereof, and Debentures so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. All references in this Indenture to the authentication of Debentures by the Trustee shall be deemed to include authentication by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation that has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and that is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by federal or state authorities. If at



any time any Authenticating Agent shall cease to be eligible in accordance with these provisions, it shall resign immediately.

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

### ARTICLE III

#### REDEMPTION OF DEBENTURES

Section 3.1. Redemption. Subject to the Company having received prior approval of the Federal Reserve, if then required under the applicable capital guidelines, policies or regulations of the Federal Reserve, the Company may redeem the Debentures issued hereunder on and after the dates set forth in and in accordance with the terms of this Article III.

Section 3.2. Special Event Redemption. Subject to the Company having received the prior approval of the Federal Reserve, if then required under the applicable capital guidelines, policies or regulations of the Federal Reserve, if a Special Event has occurred and is continuing, then, notwithstanding Section 3.3(a) but subject to Section 3.3(b), the Company shall have the right upon not less than 30 days' nor more than 60 days' notice to the holders of the Debentures to redeem the Debentures, in whole but not in part, for cash within 180 days following the occurrence of such Special Event (the "180-Day Period") at a redemption price equal to 100% of the principal amount to be redeemed plus any accrued and unpaid interest thereon to the date of such redemption (the "Redemption Price"), provided that if at the time there is available to the Company the opportunity to eliminate, within the 180-Day Period, a Tax Event by taking some ministerial action (a "Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure which has no adverse effect on the Company, the Trust or the holders of the Trust Securities issued by the Trust, the Company shall pursue such Ministerial Action in lieu of redemption, and, provided further, that the Company shall have no right to redeem the Debentures pursuant to this Section 3.2 while it is pursuing any Ministerial Action pursuant to its obligations hereunder, and, provided further, that, if it is determined that the taking of a Ministerial Action would not eliminate the Tax Event within the 180 Day Period, the Company's right to redeem the Debentures pursuant to this Section 3.2 shall be restored and it shall have no further obligations to pursue the Ministerial Action. The Redemption Price shall be paid prior to 12:00 noon, New York time, on the date of such redemption or such earlier time as the Company determines, provided that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York time, on the date such Redemption Price is to be paid.

Section 3.3. Optional Redemption by the Company. (a) Subject to the provisions of Section 3.3(c), except as otherwise may be specified in this Indenture, the Company shall have the right to redeem the Debentures, in whole or in part, from time to time, on or after June \_\_, 2006, at a Redemption Price equal to 100% of the principal amount to be redeemed plus any accrued and unpaid interest thereon to the date of such redemption. Any redemption pursuant to this Section 3.3(a) shall be made upon not less than 30 days' nor more than 60 days' notice to the holder of the Debentures, at the Redemption Price. If the Debentures are only partially redeemed pursuant to this Section 3.3(a), the Debentures shall be redeemed pro rata or by lot or in such other manner as the Trustee shall deem appropriate and fair in its discretion. The Redemption Price shall be paid prior to 12:00 noon, New York time, on the date of such redemption or at such earlier time as the Company determines provided that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York time, on the date such Redemption Price is to be paid.

(b) Subject to the provisions of Section 3.3(c), the Company shall have the right to redeem Debentures at any time and from time to time in a principal amount equal to the Liquidation Amount (as defined in the Trust Agreement) of any Preferred Securities purchased and beneficially owned by the Company, plus an additional principal amount of Debentures equal to the Liquidation Amount (as defined in the Trust Agreement) of that number of Common Securities that bears the same proportion to the total number of Common Securities then outstanding as the number of Preferred Securities to be redeemed bears to the total number of Preferred Securities then outstanding. Such Debentures shall be redeemed pursuant to this Section 3.3(b) only in exchange for and upon surrender by the Company to the Property Trustee of the Preferred Securities and a proportionate amount of Common Securities, whereupon the Property Trustee shall cancel the Preferred Securities and Common Securities so surrendered and a Like Amount (as defined in the Trust Agreement) of Debentures shall be extinguished by the Trustee and shall no longer be deemed Outstanding.

(c) If a partial redemption of the Debentures would result in the delisting of the Preferred Securities issued by the Trust from the Nasdaq National Market or any national securities exchange or other organization on which the Preferred Securities are then listed or quoted, the Company shall not be permitted to effect such partial redemption and may only redeem the Debentures in whole.

Section 3.4. Notice of Redemption. (a) Except in the case of a redemption pursuant to Section 3.3(b), in case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Debentures in accordance with the right reserved so to do, the Company shall, or shall cause the Trustee to upon receipt of 45 days' written notice from the Company (which notice shall, in the event of a partial redemption, include a representation to the effect that such partial redemption will not result in the delisting of the Preferred Securities as described in Section 3.3(c) above), give notice of such redemption to holders of the Debentures to be redeemed by mailing, first class postage prepaid, a notice of such redemption not less than 30 days and not more than 60 days before the date fixed for redemption to such holders at their last addresses as they shall appear upon the Debenture Register unless a shorter period is specified in the Debentures to be redeemed. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered

holder receives the notice. In any case, failure duly to give such notice to the holder of any Debenture designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Debentures. In the case of any redemption of Debentures prior to the expiration of any restriction on such redemption provided in the terms of such Debentures or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with any such restriction. Each such notice of redemption shall specify the date fixed for redemption and the Redemption Price and shall state that payment of the Redemption Price shall be made at the office or agency of the Company in the Borough of Manhattan, the City of New York or at the Corporate Trust Office, upon presentation and surrender of such Debentures, that interest accrued to the date fixed for redemption shall be paid as specified in said notice and that from and after said date interest shall cease to accrue. If less than all the Debentures are to be redeemed, the notice to the holders of the Debentures shall specify the particular Debentures to be redeemed. If the Debentures are to be redeemed in part only, the notice shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the redemption date, upon surrender of such Debenture, a new Debenture or Debentures in principal amount equal to the unredeemed portion thereof shall be issued.

(b) Except in the case of a redemption pursuant to Section 3.3(b), if less than all the Debentures are to be redeemed, the Company shall give the Trustee at least 45 days' written notice in advance of the date fixed for redemption as to the aggregate principal amount of Debentures to be redeemed, and thereupon the Trustee shall select, pro rata or by lot or in such other manner as it shall deem appropriate and fair in its discretion, the portion or portions (equal to \$10 or any integral multiple thereof) of the Debentures to be redeemed and shall thereafter promptly notify the Company in writing of the numbers of the Debentures to be redeemed, in whole or in part. The Company may, if and whenever it shall so elect pursuant to the terms hereof, by delivery of instructions signed on its behalf by its Chief Executive Officer, President or any Vice President, instruct the Trustee or any Paying Agent to call all or any part of the Debentures for redemption and to give notice of redemption in the manner set forth in this Section 3.4, such notice to be in the name of the Company or its own name as the Trustee or such Paying Agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such Paying Agent, the Company shall deliver or cause to be delivered to, or permit to remain with, the Trustee or such Paying Agent, as the case may be, such Debenture Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such Paying Agent to give any notice by mail that may be required under the provisions of this Section 3.4.

Section 3.5. Payment upon Redemption. (a) If the giving of notice of redemption shall have been completed as above provided, the Debentures or portions of Debentures to be redeemed specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable Redemption Price, and interest on such Debentures or portions of Debentures shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such Redemption Price with respect to any such Debenture or portion thereof. On presentation and surrender of such Debentures on or after the date fixed for redemption at the place of payment specified in the notice, said Debentures shall be paid and redeemed at the Redemption Price (but if the date fixed for redemption is an Interest

Payment Date, the interest installment payable on such date shall be payable to the registered holder at the close of business on the applicable record date pursuant to Section 3.3).

(b) Upon presentation of any Debenture that is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Debenture is presented shall deliver to the holder thereof, at the expense of the Company, a new Debenture of authorized denomination in principal amount equal to the unredeemed portion of the Debenture so presented.

Section 3.6. No Sinking Fund. The Debentures are not entitled to the benefit of any sinking fund.

#### ARTICLE IV

##### EXTENSION OF INTEREST PAYMENT PERIOD

Section 4.1. Extension of Interest Payment Period. So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time and from time to time during the term of the Debentures, to defer payments of interest by extending the interest payment period of such Debentures for a period not exceeding 20 consecutive quarters (the "Extension Period"), during which Extension Period no interest shall be due and payable; provided that no Extension Period may extend beyond the Maturity Date or end on a date other than an Interest Payment Date. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 4.1, shall bear interest thereon at the Coupon Rate compounded quarterly for each quarter of the Extension Period ("Compounded Interest"). At the end of the Extension Period, the Company shall calculate (and deliver such calculation to the Trustee) and pay all interest accrued and unpaid on the Debentures, including any Additional Payments and Compounded Interest (together, "Deferred Payments") that shall be payable to the holders of the Debentures in whose names the Debentures are registered in the Debenture Register on the first record date after the end of the Extension Period. Before the termination of any Extension Period, the Company may further extend such period so long as no Event of Default has occurred and is continuing, provided that such period together with all such further extensions thereof shall not exceed 20 consecutive quarters, or extend beyond the Maturity Date of the Debentures or end on a date other than an Interest Payment Date. Upon the termination of any Extension Period and upon the payment of all Deferred Payments then due, the Company may commence a new Extension Period, subject to the foregoing requirements. No interest shall be due and payable during an Extension Period, except at the end thereof, but the Company may prepay at any time all or any portion of the interest accrued during an Extension Period.

Section 4.2. Notice of Extension. (a) If the Property Trustee is the only registered holder of the Debentures at the time the Company selects an Extension Period, the Company shall give written notice to the Administrative Trustees, the Property Trustee and the Trustee of its selection of such Extension Period two Business Days before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities issued by the Trust are payable; or (ii) the date the Trust is required to give notice of the record date, or the date such

Distributions are payable, to the Nasdaq National Market or other applicable self-regulatory organization or to holders of the Preferred Securities issued by the Trust, but in any event at least one Business Day before such record date.

(b) If the Property Trustee is not the only holder of the Debentures at the time the Company selects an Extension Period, the Company shall give the holders of the Debentures and the Trustee written notice of its selection of such Extension Period at least two Business Days before the earlier of (i) the next succeeding Interest Payment Date; or (ii) the date the Company is required to give notice of the record or payment date of such interest payment to the Nasdaq National Market or other applicable self-regulatory organization or to holders of the Debentures.

(c) The quarter in which any notice is given pursuant to paragraphs (a) or (b) of this Section 4.2 shall be counted as one of the 20 quarters permitted in the maximum Extension Period permitted under Section 4.1.

Section 4.3. Limitation on Transactions. If (a) the Company shall exercise its right to defer payment of interest as provided in Section 4.1; or (b) there shall have occurred any Event of Default, then (i) neither the Company nor any of its Subsidiaries shall declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than (A) dividends or distributions in common stock of the Company or such Subsidiary, as the case may be, or any declaration of a non-cash dividend in connection with the implementation of a shareholder rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (B) purchases of common stock of the Company related to the rights under any of the Company's benefit plans for its directors, officers or employees, (C) as a result of a reclassification of its capital stock for another class of its capital stock or (D) dividends payable by such Subsidiary to the Company or any of its Subsidiaries); (ii) the Company shall not make any payment of interest, principal or premium, if any, or repay, repurchase or redeem any debt securities issued by the Company which rank pari passu with or junior to the Debentures or make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior to the Debentures; provided, however, that notwithstanding the foregoing the Company may make payments pursuant to its obligations under the Preferred Securities Guarantee; and (iii) the Company shall not redeem, purchase or acquire less than all of the Outstanding Debentures or any of the Preferred Securities.

#### ARTICLE V

##### PARTICULAR COVENANTS OF THE COMPANY

Section 5.1. Payment of Principal and Interest. The Company shall duly and punctually pay or cause to be paid the principal of and interest on the Debentures at the time and place and in the manner provided herein. Each such payment of the principal of and interest on the Debentures shall relate only to the Debentures, shall not be combined with any other payment of

the principal of or interest on any other obligation of the Company, and shall be clearly and unmistakably identified as pertaining to the Debentures.

Section 5.2. Maintenance of Agency. So long as any of the Debentures remain Outstanding, the Company shall maintain, or shall cause to be maintained, an office or agency in the Borough of Manhattan, the City of New York, and at such other location or locations as may be designated as provided in this Section 5.2, where (a) Debentures may be presented for payment; (b) Debentures may be presented as hereinabove authorized for registration of transfer and exchange; and (c) notices and demands to or upon the Company in respect of the Debentures and this Indenture may be given or served, such designation to continue with respect to such office or agency until the Company shall, by written notice signed by its President or a Vice President and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands. In addition to any such office or agency, the Company may from time to time designate one or more offices or agencies outside of the Borough of Manhattan, the City of New York, where the Debentures may be presented for registration or transfer and for exchange in the manner provided herein, and the Company may from time to time rescind such designation as the Company may deem desirable or expedient; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain any such office or agency in the Borough of Manhattan, the City of New York, for the purposes above mentioned. The Company shall give the Trustee prompt written notice of any such designation or rescission thereof.

Section 5.3. Paying Agents. (a) The Trustee shall be the initial Paying Agent. If the Company shall appoint one or more Paying Agents for the Debentures, other than the Trustee, the Company shall cause each such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.3:

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

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

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

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

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

(c) Notwithstanding anything in this Section 5.3 to the contrary, (i) the agreement to hold sums in trust as provided in this Section 5.3 is subject to the provisions of Section 13.3 and 13.4; and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 5.4. Appointment to Fill Vacancy in Office of the Trustee. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, shall appoint, in the manner provided in Section 9.11, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.5. Compliance with Consolidation Provisions. The Company shall not, while any of the Debentures remain Outstanding, consolidate with, or merge into, or merge into itself, or sell or convey all or substantially all of its property to any other company unless the provisions of Article XII hereof are complied with.

Section 5.6. Limitation on Transactions. If Debentures are issued to the Trust or a trustee of the Trust in connection with the issuance of Trust Securities by the Trust and (a) there shall have occurred an Event of Default; (b) the Company shall be in default with respect to its payment of any obligations under the Preferred Securities Guarantee relating to the Trust; or (c) if the Company shall have given notice of its election to defer payments of interest on such Debentures by extending the interest payment period as provided in this Indenture and such Extension Period, or any extension thereof, shall be continuing, then (i) neither the Company nor any of its Subsidiaries shall declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than (A) dividends or distributions in common stock of the Company or such Subsidiary, as the case may be, or any declaration of a non-cash dividend in connection with the

implementation of a shareholder rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (B) purchases of common stock of the Company related to the rights under any of the Company's benefit plans for its directors, officers or employees, (C) as a result of a reclassification of its capital stock or (D) dividends payable by such Subsidiary to the Company or any of its Subsidiaries); (ii) the Company shall not make any payment of principal, interest or premium, if any, or repay, repurchase or redeem any debt securities issued by the Company which rank pari passu with or junior in interest to the Debentures; provided, however, that the Company may make payments pursuant to its obligations under the Preferred Securities Guarantee; and (iii) the Company shall not redeem, purchase or acquire less than all of the Outstanding Debentures or any of the Preferred Securities.

Section 5.7. Covenants as to the Trust. For so long as the Trust Securities of the Trust remain outstanding, the Company (a) shall maintain 100% direct or indirect ownership of the Common Securities of the Trust; provided, however, that any permitted successor of the Company under this Indenture may succeed to the Company's ownership of the Common Securities; (b) shall not voluntarily terminate, wind up or liquidate the Trust, except upon prior approval of the Federal Reserve if then so required under applicable capital guidelines, policies or regulations of the Federal Reserve; (c) shall use its reasonable efforts to cause the Trust (i) to remain a business trust (and to avoid involuntary termination, winding up or liquidation), except in connection with a distribution of Debentures, the redemption of all of the Trust Securities of the Trust or certain mergers, consolidations or amalgamations, each as permitted by the Trust Agreement; and (ii) to otherwise continue not to be treated as an association taxable as a corporation or partnership for United States federal income tax purposes; (d) shall use its reasonable efforts to cause each holder of Trust Securities to be treated as owning an individual beneficial interest in the Debentures; and (e) any successor to the Company, shall use reasonable efforts to maintain the eligibility of the Preferred Securities for quotation or listing on any national securities exchange or other organization on which the Preferred Securities are then quoted or listed (including, if applicable, the Nasdaq National Market) and shall use reasonable efforts to keep the Preferred Securities so quoted or listed for so long as the Preferred Securities remain outstanding. In connection with the distribution of the Debentures to the holders of the Preferred Securities issued by the Trust upon a Dissolution Event, the Company shall use its best efforts to list such Debentures on the Nasdaq National Market or on such other exchange as the Preferred Securities are then listed.

Section 5.8. Covenants as to Purchases. Except upon the exercise by the Company of its right to redeem the Debentures pursuant to Section 3.2 upon the occurrence and continuation of a Special Event, the Company shall not purchase any Debentures, in whole or in part, from the Trust prior to June \_\_, 2006.

Section 5.9. Waiver of Usury, Stay or Extension Laws. The Company shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performances of this Indenture, and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein



granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### ARTICLE VI

##### THE DEBENTUREHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.1. The Company to Furnish the Trustee Names and Addresses of the Debentureholders. The Company shall furnish or cause to be furnished to the Trustee (a) on a quarterly basis on each regular record date (as described in Section 2.5) a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of the Debentures as of such regular record date, provided that the Company shall not be obligated to furnish or cause to furnish such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company (in the event the Company fails to provide such list on a quarterly basis, the Trustee shall be entitled to rely on the most recent list provided by the Company); and (b) at such other times as the Trustee may request in writing within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, that, in either case, no such list need be furnished if the Trustee shall be the Debenture Registrar.

Section 6.2. Preservation of Information Communications with the Debentureholders. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Debentures contained in the most recent list furnished to it as provided in Section 6.1 and as to the names and addresses of holders of Debentures received by the Trustee in its capacity as Debenture Registrar for the Debentures (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 6.1 upon receipt of a new list so furnished.

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

Section 6.3. Reports by the Company. (a) The Company covenants and agrees to file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports that may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations.

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

(c) The Company covenants and agrees to transmit by mail, first class postage prepaid, or reputable overnight delivery service that provides for evidence of receipt, to the Debentureholders, as their names and addresses appear upon the Debenture Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 6.3 as may be required by rules and regulations prescribed from time to time by the Commission.

Section 6.4. Reports by the Trustee. (a) On or before [October 15] in each year in which any of the Debentures are Outstanding, the Trustee shall transmit by mail, first class postage prepaid, to the Debentureholders, as their names and addresses appear upon the Debenture Register, a brief report dated as of the preceding September 30, if and to the extent required under Section 313(a) of the Trust Indenture Act.

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

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

## ARTICLE VII

### REMEDIES OF THE TRUSTEE AND DEBENTUREHOLDERS ON EVENT OF DEFAULT

Section 7.1. Events of Default. (a) Whenever used herein with respect to the Debentures, "Event of Default" means any one or more of the following events:

(i) the Company defaults in the payment of any installment of interest upon any of the Debentures, as and when the same shall become due and payable, and continuance of such default for a period of 30 days; provided, however, that a valid extension of an interest payment period by the Company in accordance with the terms of this Indenture shall not constitute a default in the payment of interest for this purpose;

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

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

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

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

(vi) the Trust shall have voluntarily or involuntarily dissolved, wound-up its business or otherwise terminated its existence except in connection with (A) the distribution of Debentures to holders of Trust Securities in liquidation of their interests in the Trust; (B) the redemption of all of the outstanding Trust Securities of the Trust; or (C) certain mergers, consolidations or amalgamations, each as permitted by the Trust Agreement.

(b) In each and every such case referred to in items (i) through (vi) of Section 7.1(a), unless the principal of all the Debentures shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Debentures then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Debentureholders) may declare the principal of all the Debentures to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, notwithstanding anything contained in this Indenture or in the Debentures.

(c) At any time after the principal of the Debentures shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered as hereinafter provided, the holders of a majority in aggregate principal amount of the Debentures then Outstanding hereunder, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if: (i) the Company has paid or deposited with the Trustee a sum sufficient to pay all matured installments of interest upon all the Debentures and the principal of any and all Debentures that shall have become due otherwise than by acceleration (with interest upon such principal, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Debentures to the date of such payment or deposit) and the amount payable to the Trustee under Section 9.7; and (ii) any and all Events of Default under this Indenture, other than the nonpayment of principal on Debentures that shall not have become due

by their terms, shall have been remedied or waived as provided in Section 7.6. No such rescission and annulment shall extend to or shall affect any subsequent default or impair any right consequent thereon.

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

Section 7.2. Collection of Indebtedness and Suits for Enforcement by the Trustee. (a) The Company covenants that (i) in case it shall default in the payment of any installment of interest on any of the Debentures, and such default shall have continued for a period of 30 days; or (ii) in case it shall default in the payment of the principal of any of the Debentures when the same shall have become due and payable, whether upon maturity of the Debentures or upon redemption or upon declaration or otherwise, then, upon demand of the Trustee, the Company shall pay to the Trustee, for the benefit of the holders of the Debentures, the whole amount that then shall have become due and payable on all such Debentures for principal or interest, or both, as the case may be, with interest upon the overdue principal; and (to the extent that payment of such interest is enforceable under applicable law and, if the Debentures are held by the Trust or a trustee of the Trust, without duplication of any other amounts paid by the Trust or trustee in respect thereof) upon overdue installments of interest at the rate per annum expressed in the Debentures; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 9.7.

(b) If the Company shall fail to pay such amounts set forth in Section 7.2(a) forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Debentures and collect the money adjudged or decreed to be payable in the manner provided by law out of the property of the Company or other obligor upon the Debentures, wherever situated.

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or judicial proceedings affecting the Company, the Trust, or the creditors or property of either, the Trustee shall have power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Debentures allowed for the entire amount due and payable by the Company under this Indenture at the date of institution of such proceedings and for any additional amount that may become due and payable by the Company after such date, and to collect and receive any money or other property payable or deliverable on any such claim, and to distribute the same

after the deduction of the amount payable to the Trustee under Section 9.7; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Debentures to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Debentureholders, to pay to the Trustee any amount due it under Section 9.7.

(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to the Debentures, may be enforced by the Trustee without the possession of any of such Debentures, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for payment to the Trustee of any amounts due under Section 9.7, be for the ratable benefit of the holders of the Debentures. In case of an Event of Default hereunder which is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law. Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Debentureholder any plan of reorganization, arrangement, adjustment or composition affecting the Debentures or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Debentureholder in any such proceeding.

Section 7.3. Application of Money Collected. Any money or other assets collected by the Trustee pursuant to this Article VII with respect to the Debentures shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or other assets on account of principal or interest, upon presentation of the Debentures, and notation thereon of the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 9.7;

SECTION: To the payment of all Senior Indebtedness if and to the extent required by Article XVI; and

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

Section 7.4. Limitation on Suits. (a) Except as set forth in this Indenture, no holder of any Debenture shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder,

unless (i) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to the Debentures specifying such Event of Default, as hereinbefore provided; (ii) the holders of not less than 25% in aggregate principal amount of the Debentures then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as trustee hereunder; (iii) such holder or holders shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby; and (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action, suit or proceeding and during such 60 day period, the holders of a majority in principal amount of the Debentures do not give the Trustee a direction inconsistent with the request.

(b) Notwithstanding anything contained herein to the contrary or any other provisions of this Indenture, the right of any holder of the Debentures to receive payment of the principal of and interest on the Debentures, as therein provided, on or after the respective due dates expressed in such Debenture (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder and by accepting a Debenture hereunder it is expressly understood, intended and covenanted by the taker and holder of every Debenture with every other such taker and holder and the Trustee that no one or more holders of the Debentures shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Debentures, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of the Debentures. For the protection and enforcement of the provisions of this Section 7.4, each and every Debentureholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 7.5. Rights and Remedies Cumulative; Delay or Omission not Waiver. (a) Except as otherwise provided in Section 2.9(b), all powers and remedies given by this Article VII to the Trustee or to the Debentureholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any other powers and remedies available to the Trustee or the holders of the Debentures, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Debentures.

(b) No delay or omission of the Trustee or of any holder of any of the Debentures to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 7.4, every power and remedy given by this Article VII or by law to the Trustee or the Debentureholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Debentureholders.

Section 7.6. Control by the Debentureholders. The holders of a majority in aggregate principal amount of the Debentures at the time Outstanding, determined in accordance with Section 10.4, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture. Subject to the provisions of Section 9.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Debentures at the time Outstanding affected thereby, determined in accordance with Section 10.4, may on behalf of the holders of all of the Debentures waive any past default in the performance of any of the covenants contained herein and its consequences, except (i) a default in the payment of the principal of or interest on any of the Debentures as and when the same shall become due by the terms of such Debentures otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of principal and interest has been deposited with the Trustee (in accordance with Section 7.1(c)); (ii) a default in the covenants contained in Section 5.7; or (iii) in respect of a covenant or provision hereof which cannot be modified or amended without the consent of the holder of each Outstanding Debenture affected; provided, however, that if the Debentures are held by the Trust or a trustee of the Trust, such waiver or modification to such waiver shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the Trust shall have consented to such waiver or modification to such waiver; provided further, that if the Debentures are held by the Trust or a trustee of the Trust, and if the consent of the holder of each Outstanding Debenture is required, such waiver shall not be effective until each holder of the Trust Securities of the Trust shall have consented to such waiver. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Debentures shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 7.7. Undertaking to Pay Costs. All parties to this Indenture agree, and each holder of any Debentures by such holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as the 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 7.7 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Debentureholder, or group of the Debentureholders holding more than 10% in aggregate principal amount of the Outstanding Debentures, or to any suit instituted by any Debentureholder for the enforcement of the payment of the principal of or interest on the Debentures, on or after the respective due dates expressed in such Debenture or established pursuant to this Indenture.

Section 7.8. Direct Action; Right of Set-Off. In the event that an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest on or principal of the Debentures on an Interest Payment Date or Maturity Date, as applicable, then a holder of Preferred Securities may institute a legal proceeding directly against the Company for enforcement of payment to such holder of the principal of or interest on such Debentures having a principal amount equal to the aggregate Liquidation Amount of the Preferred Securities of such holders (a "Direct Action"). In connection with such Direct Action, the Company will have a right of set-off under this Indenture to the extent of any payment actually made by the Company to such holder of the Preferred Securities with respect to such Direct Action.

#### ARTICLE VIII

##### FORM OF THE DEBENTURE AND ORIGINAL ISSUE

Section 8.1. Form of Debenture. The Debenture and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the forms contained as Exhibit A to this Indenture, attached hereto and incorporated herein by reference.

Section 8.2. Original Issue of the Debentures. Debentures in the aggregate principal amount of \$20,618,560 may, upon execution of this Indenture, be executed by the Company and delivered to the Trustee for authentication. If the Underwriters exercise their Option and there is an Option Closing Date (as such terms are defined in the Underwriting Agreement, dated June \_\_, 2001, by and among the Company, the Trust and Howe Barnes Investments, Inc. and Stephens Inc., as representatives of the several Underwriters named therein, then, on such Option Closing Date, Debentures in the additional aggregate amount of up to \$3,092,780 may be executed by the Company and delivered to the Trustee for authentication. The Trustee shall thereupon authenticate and deliver said Debentures to or upon the written order of the Company, signed by its Chief Executive Officer, its President, or any Vice President and its Treasurer or an Assistant Treasurer, without any further action by the Company.

#### ARTICLE IX

##### CONCERNING THE TRUSTEE

Section 9.1. Certain Duties and Responsibilities of the Trustee. (a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform with respect to the Debentures such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default has occurred that has not been cured or waived, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.



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

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

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

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

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Debentures at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture with respect to the Debentures; and

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

Section 9.2. Notice of Defaults. Within 90 days after actual knowledge by a Responsible Officer of the Trustee of the occurrence of any Default hereunder with respect to the Debentures, the Trustee shall transmit by mail to all holders of the Debentures, as their names and addresses appear in the Debenture Register, notice of such Default, unless such Default shall have been cured or waived; provided, however, that, except in the case of a Default

in the payment of the principal or interest (including any Additional Payments) on any Debenture, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of the directors and/or Responsible Officers of the Trustee determines in good faith that the withholding of such notice is in the interests of the holders of such Debentures; and provided, further, that in the case of any Default of the character specified in section 7.1(a)(iii), no such notice to holders of Debentures need be sent until at least 30 days after the occurrence thereof.

Section 9.3. Certain Rights of the Trustee. Except as otherwise provided in Section 9.1:

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

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

(c) The Trustee shall not be deemed to have knowledge of a Default or an Event of Default, other than an Event of Default specified in Section 7.1(a)(i) or (ii), unless and until it receives written notification of such Event of Default from the Company or by holders of at least 25% of the aggregate principal amount of the Debentures at the time Outstanding;

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

(e) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Debentureholders, pursuant to the provisions of this Indenture, unless such Debentureholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby; nothing contained herein shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default (that is continuing and has not been cured or waived) to exercise with respect to the Debentures such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs;

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

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security, or other papers or documents, unless requested in writing so to do by the holders of not less than a majority in principal amount of the Outstanding Debentures (determined as provided in Section 10.4); provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to so proceeding, and the reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand; and

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

Section 9.4. The Trustee not Responsible for Recitals, Etc. (a) The Recitals contained herein and in the Debentures shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same.

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

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

Section 9.5. May Hold the Debentures. The Trustee or any Paying Agent or Debenture Registrar for the Debentures, in its individual or any other capacity, may become the owner or pledgee of the Debentures with the same rights it would have if it were not Trustee, Paying Agent or Debenture Registrar.

Section 9.6. Money Held in Trust. Subject to the provisions of Section 13.5, all money received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except such as it may agree with the Company to pay thereon.

Section 9.7. Compensation and Reimbursement. (a) The Company covenants and agrees to pay to the Trustee, and the Trustee shall be entitled to, such reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), as the Company and the Trustee may from time to time agree in writing, for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, and, except as otherwise expressly provided herein, the Company shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also covenants to indemnify the Trustee (and its officers, agents, directors and employees) for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this Indenture, including the costs and expenses of defending itself against any claim of liability in the premises.

(b) The obligations of the Company under this Section 9.7 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Debentures upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Debentures.

Section 9.8. Reliance on Officers' Certificate. Except as otherwise provided in Section 9.1, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

Section 9.9. Disqualification; Conflicting Interests. If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 9.10. Corporate Trustee Required; Eligibility. There shall at all times be a Trustee with respect to the Debentures issued hereunder which shall at all times be a corporation organized and doing business under the laws of the United States or any state or territory thereof or of the District of Columbia, or a corporation or other Person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by federal, state, territorial, or District of Columbia authority. If such corporation publishes reports of

condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 9.10, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any Person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 9.10, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.11.

Section 9.11. Resignation and Removal; Appointment of Successor. (a) The Trustee or any successor hereafter appointed, may at any time resign by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Debentureholders, as their names and addresses appear upon the Debenture Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to Debentures by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to Debentures, or any Debentureholder who has been a bona fide holder of a Debenture or Debentures for at least six months may, subject to the provisions of Sections 9.9 and 9.10, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any one of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 9.9 after written request therefor by the Company or by any Debentureholder who has been a bona fide holder of a Debenture or Debentures for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 9.10 and shall fail to resign after written request therefor by the Company or by any such Debentureholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or commence a voluntary bankruptcy proceeding, or a receiver of the Trustee or of its property shall be appointed or consented to, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee with respect to all Debentures and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 9.10, unless the Trustee's duty to resign is stayed as provided herein, any Debentureholder who has been a bona fide

holder of a Debenture or Debentures for at least six months may, on behalf of that holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of the Debentures may not remove the Trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee with respect to the Debentures pursuant to any of the provisions of this Section 9.11 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 9.12.

(e) Any successor trustee appointed pursuant to this Section 9.11 may be appointed with respect to the Debentures, and at any time there shall be only one Trustee with respect to the Debentures.

Section 9.12. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor trustee with respect to the Debentures, every successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and trusts referred to in paragraph (a) of this Section 9.12.

(c) No successor trustee shall accept its appointment unless at the time of such acceptance such successor trustee shall be qualified and eligible under this Article IX.

(d) Upon acceptance of appointment by a successor trustee as provided in this Section 9.12, the Company shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Debentureholders, as their names and addresses appear upon the Debenture Register. If the Company fails to transmit such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be transmitted at the expense of the Company.

Section 9.13. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation

shall be qualified under the provisions of Section 9.9 and eligible under the provisions of Section 9.10, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Debentures shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Debentures so authenticated with the same effect as if such successor Trustee had itself authenticated such Debentures.

Section 9.14. Preferential Collection of Claims against the Company. The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

## ARTICLE X

### CONCERNING THE DEBENTUREHOLDERS

Section 10.1. Evidence of Action by the Holders. (a) Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of the Debentures may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such majority or specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Debentures in person or by agent or proxy appointed in writing.

(b) If the Company shall solicit from the Debentureholders any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officers' Certificate, fix in advance a record date for the determination of Debentureholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Debentureholders of record at the close of business on the record date shall be deemed to be Debentureholders for the purposes of determining whether Debentureholders of the requisite proportion of Outstanding Debentures have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Debentures shall be computed as of the record date; provided, however, that no such authorization, agreement or consent by such Debentureholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six (6) months after the record date.

Section 10.2. Proof of Execution by the Debentureholders. Subject to the provisions of Section 9.1, proof of the execution of any instrument by a Debentureholder (such proof shall not

require notarization) or such Debentureholder's agent or proxy and proof of the holding by any Person of any of the Debentures shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee.

(b) The ownership of Debentures shall be proved by the Debenture Register of such Debentures or by a certificate of the Debenture Registrar thereof.

(c) The Trustee may require such additional proof of any matter referred to in this Section 10.2 as it shall deem necessary.

Section 10.3. Who May be Deemed Owners. Prior to the due presentment for registration of transfer of any Debenture, the Company, the Trustee, any Paying Agent, any Authenticating Agent and any Debenture Registrar may deem and treat the Person in whose name such Debenture shall be registered upon the books of the Company as the absolute owner of such Debenture (whether or not such Debenture shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Debenture Registrar) for the purpose of receiving payment of or on account of the principal of and interest on such Debenture (subject to Section 2.3) and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Authenticating Agent nor any Debenture Registrar shall be affected by any notice to the contrary.

Section 10.4. Certain Debentures Owned by Company Disregarded. In determining whether the holders of the requisite aggregate principal amount of the Debentures have concurred in any direction, consent or waiver under this Indenture, the Debentures that are owned by the Company or any other obligor on the Debentures or by any Person directly or indirectly controlling or controlled by or under common control with the Company or any other obligor on the Debentures shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that (a) for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Debentures that the Trustee actually knows are so owned shall be so disregarded; and (b) for purposes of this Section 10.4, the Trust shall be deemed not to be controlled by the Company. The Debentures so owned that have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 10.4, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right so to act with respect to such Debentures and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 10.5. Actions Binding on the Future Debentureholders. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 10.1, of the taking of any action by the holders of the majority or percentage in aggregate principal amount of the Debentures specified in this Indenture in connection with such action, any holder of a Debenture that is shown by the evidence to be included in the Debentures the holders of which have consented to such action may, by filing written notice with the Trustee, and upon proof of holding as



provided in Section 10.2, revoke such action so far as concerns such Debenture. Except as aforesaid, any such action taken by the holder of any Debenture shall be conclusive and binding upon such holder and upon all future holders and owners of such Debenture, and of any Debenture issued in exchange therefor, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Debenture. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Debentures specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Debentures.

#### ARTICLE XI

##### SUPPLEMENTAL INDENTURES

Section 11.1. Supplemental Indentures without the Consent of the Debentureholders. In addition to any supplemental indenture otherwise authorized by this Indenture, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect), without the consent of the Debentureholders, for one or more of the following purposes:

- (a) to cure any ambiguity, defect, or inconsistency herein, or in the Debentures;
- (b) to comply with Article X;
- (c) to provide for uncertificated Debentures in addition to or in place of certificated Debentures;
- (d) to add to the covenants of the Company for the benefit of the holders of all or any of the Debentures or to surrender any right or power herein conferred upon the Company;
- (e) to add to, delete from, or revise the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Debentures, as herein set forth;
- (f) to make any change that does not adversely affect the rights of any Debentureholder in any material respect;
- (g) to provide for the issuance of and establish the form and terms and conditions of the Debentures, to establish the form of any certifications required to be furnished pursuant to the terms of this Indenture or of the Debentures, or to add to the rights of the holders of the Debentures;
- (h) to qualify or maintain the qualification of this Indenture under the Trust Indenture Act; or

(i) to evidence a consolidation or merger involving the Company as permitted under Section 12.1.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. Any supplemental indenture authorized by the provisions of this Section 11.1 may be executed by the Company and the Trustee without the consent of the holders of any of the Debentures at the time Outstanding, notwithstanding any of the provisions of Section 11.2.

Section 11.2. Supplemental Indentures with Consent of the Debentureholders. With the consent (evidenced as provided in Section 10.1) of the holders of not less than a majority in aggregate principal amount of the Debentures at the time Outstanding, the Company, when authorized by Board Resolutions, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner not covered by Section 11.1 the rights of the holders of the Debentures under this Indenture; provided, however, that no such supplemental indenture shall without the consent of the holders of each Debenture then Outstanding and affected thereby, (a) extend the fixed maturity of any Debentures, reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon; or (b) reduce the aforesaid percentage of Debentures, the holders of which are required to consent to any such supplemental indenture; provided further, that if the Debentures are held by the Trust or a trustee of the Trust, such supplemental indenture shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the Trust shall have consented to such supplemental indenture; provided further, that if the Debentures are held by the Trust or a trustee of the Trust and if the consent of the holder of each Outstanding Debenture is required, such supplemental indenture shall not be effective until each holder of the Trust Securities of the Trust shall have consented to such supplemental indenture. It shall not be necessary for the consent of the Debentureholders affected thereby under this Section 11.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 11.3. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture pursuant to the provisions of this Article XI, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Debentures shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 11.4. The Debentures Affected by Supplemental Indentures. The Debentures affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article XI, may bear a notation in form approved by the Company, provided such form meets the requirements of any exchanges or automated quotation system upon which the Debentures may be listed or quoted, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Debentures so modified as to conform, in the opinion of the Board of Directors of the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Debentures then Outstanding.

Section 11.5. Execution of Supplemental Indentures. (a) Upon the request of the Company, accompanied by its Board Resolutions authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Debentureholders required to consent thereto as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated, to enter into such supplemental indenture. The Trustee, subject to the provisions of Sections 9.1, may receive an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article XI is authorized or permitted by, and conforms to, the terms of this Article XI and that it is proper for the Trustee under the provisions of this Article XI to join in the execution thereof.

(b) Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 11.5, the Trustee shall transmit by mail, first class postage prepaid, a notice, setting forth in general terms the substance of such supplemental indenture, to the Debentureholders as their names and addresses appear upon the Debenture Register. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 11.6. Preservation of Registered Debentures. No supplemental indenture shall be entered into which alters the form of Debentures from registered to coupon form without an Opinion of Counsel stating that such alteration will not result in adverse federal income tax consequences to the Company.

## ARTICLE XII

### SUCCESSOR CORPORATION

Section 12.1. The Company may Consolidate, Etc. Nothing contained in this Indenture or in any of the Debentures shall prevent any consolidation or merger of the Company with or into any other corporation or corporations (whether or not affiliated with the Company, as the case may be), or successive consolidations or mergers in which the Company, as the case may be, or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance, transfer or other disposition of the property of the Company, as the case may be, or its successor

or successors as an entirety, or substantially as an entirety, to any other corporation (whether or not affiliated with the Company, as the case may be, or its successor or successors) authorized to acquire and operate the same; provided, however, that the Company hereby covenants and agrees that (a) upon any such consolidation, merger, sale, conveyance, transfer or other disposition, the due and punctual payment, in the case of the Company, of the principal of and interest on all of the Debentures, according to their tenor and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be kept or performed by the Company, as the case may be, shall be expressly assumed, by supplemental indenture (which shall conform to the provisions of the Trust Indenture Act, as then in effect) satisfactory in form to the Trustee executed and delivered to the Trustee by the entity formed by such consolidation, or into which the Company, as the case may be, shall have been merged, or by the entity which shall have acquired such property; (b) in case the Company consolidates with or merges into another Person or conveys or transfers its properties and assets substantially as an entirety to any Person, the successor Person is organized under the laws of the United States or any state or the District of Columbia; and (c) immediately after giving effect thereto, an Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing.

Section 12.2. Successor Corporation Substituted. (a) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition and upon the assumption by the successor corporation, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of, in the case of the Company, the due and punctual payment of the principal of and interest on all of the Debentures Outstanding and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, as the case may be, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named as the Company herein.

(b) In case of any such consolidation, merger, sale, conveyance, transfer or other disposition, such changes in phraseology and form (but not in substance) may be made in the Debentures thereafter to be issued as may be appropriate.

(c) Nothing contained in this Indenture or in any of the Debentures shall prevent the Company from merging into itself or acquiring by purchase or otherwise, all or any part of, the property of any other Person (whether or not affiliated with the Company).

Section 12.3. Evidence of Consolidation, etc. to Trustee. The Trustee, subject to the provisions of Section 9.1, may receive an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or other disposition, and any such assumption, comply with the provisions of this Article XII.

### ARTICLE XIII

#### SATISFACTION AND DISCHARGE

Section 13.1. Satisfaction and Discharge of Indenture. If at any time: (a) the Company shall have delivered to the Trustee for cancellation all Debentures theretofore authenticated

(other than any Debentures that shall have been destroyed, lost or stolen and that shall have been replaced or paid as provided in Section 2.9) and all Debentures for whose payment money or Governmental Obligations have theretofore been deposited in trust or segregated and held in trust by the Company (and thereupon repaid to the Company or discharged from such trust, as provided in Section 13.5); or (b) all such Debentures not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit or cause to be deposited with the Trustee as trust funds the entire amount in money or Governmental Obligations sufficient, or a combination thereof sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay at maturity or upon redemption all Debentures not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company; then this Indenture shall thereupon cease to be of further effect except for the provisions of Sections 2.3, 2.7, 2.9, 5.1, 5.2, 5.3, 9.7 and 9.10, that shall survive until the date of maturity or redemption date, as the case may be, and Sections 9.7 and 13.5, that shall survive to such date and thereafter, and the Trustee, on demand of the Company and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

Section 13.2. Discharge of Obligations. If at any time all Debentures not heretofore delivered to the Trustee for cancellation or that have not become due and payable as described in Section 13.1 shall have been paid by the Company by depositing irrevocably with the Trustee as trust funds money or an amount of Governmental Obligations sufficient in the opinion of a nationally recognized certified public accounting firm to pay at maturity or upon redemption all Debentures not theretofore delivered to the Trustee for cancellation, including principal and interest due or to become due to such date of maturity or date fixed for redemption, as the case may be, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then after the date such money or Governmental Obligations, as the case may be, are deposited with the Trustee, the obligations of the Company under this Indenture shall cease to be of further effect except for the provisions of Sections 2.3, 2.7, 2.9, 5.1, 5.2, 5.3, 9.6, 9.7 and 13.5, that shall survive until such Debentures shall mature and be paid. Thereafter, Sections 9.7 and 13.5 shall survive.

Section 13.3. Deposited Money to be Held in Trust. All money or Governmental Obligations deposited with the Trustee pursuant to Sections 13.1 or 13.2 shall be held in trust and shall be available for payment as due, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the holders of the Debentures for the payment or redemption of which such money or Governmental Obligations have been deposited with the Trustee.

Section 13.4. Payment of Money Held by Paying Agents. In connection with the satisfaction and discharge of this Indenture, all money or Governmental Obligations then held by any Paying Agent under the provisions of this Indenture shall, upon demand of the Company, be

paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such money or Governmental Obligations.

Section 13.5. Repayment to the Company. Any money or Governmental Obligations deposited with any Paying Agent or the Trustee, or then held by the Company in trust, for payment of principal of or interest on the Debentures that are not applied but remain unclaimed by the holders of such Debentures for at least two years after the date upon which the principal of or interest on such Debentures shall have respectively become due and payable, shall be repaid to the Company, as the case may be, on June 30 of each year or (if then held by the Company) shall be discharged from such trust; and thereupon the Paying Agent and the Trustee shall be released from all further liability with respect to such money or Governmental Obligations, and the holder of any of the Debentures entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof.

#### ARTICLE XIV

##### IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 14.1. No Recourse. No recourse under or upon any obligation, covenant or agreement of this Indenture, or of the Debentures, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever, shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debentures or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debentures or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Debentures.

#### ARTICLE XV

##### MISCELLANEOUS PROVISIONS

Section 15.1. Effect on Successors and Assigns. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its respective successors and assigns, whether so expressed or not.

Section 15.2. Actions by Successor. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the corresponding board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

Section 15.3. Surrender of the Company Powers. The Company by instrument in writing executed by appropriate authority of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company, and thereupon such power so surrendered shall terminate both as to the Company, as the case may be, and as to any successor corporation.

Section 15.4. Notices. Except as otherwise expressly provided herein any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Debentures to or on the Company may be given or served by being deposited first class postage prepaid in a post-office letterbox addressed (until another address is filed in writing by the Company with the Trustee), as follows: c/o First Busey Corporation, 201 W. Main Street, Urbana, Illinois 61801, Attention: Chief Executive Officer. Any notice, election, request or demand by the Company or any Debentureholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee.

Section 15.5. Governing Law. This Indenture and each Debenture shall be deemed to be a contract made under the internal laws of the State of Illinois and for all purposes shall be construed in accordance with the laws of said State.

Section 15.6. Treatment of the Debentures as Debt. It is intended that the Debentures shall be treated as indebtedness and not as equity for federal income tax purposes. The provisions of this Indenture shall be interpreted to further this intention. The Company (with respect to its separate books and records), the Trustee and, by acceptance of a Debenture, each holder of a Debenture, agree to treat the Debentures as indebtedness of the Company and not as equity for all tax (including without limitation, federal income tax) and financial accounting purposes.

Section 15.7. Compliance Certificates and Opinions. (a) Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

(b) Each certificate or opinion of the Company provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant in this Indenture shall include (i) a statement that the Person making such certificate or opinion has read

such covenant or condition; (ii) 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; (iii) a statement that, in the opinion of such Person, he or she has made such examination or investigation as, in the opinion of such Person, is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with; provided, however, that each such certificate shall comply with the provisions of Section 314 of the Trust Indenture Act.

Section 15.8. Payments on Business Days. In any case where the date of maturity of interest or principal of any Debenture or the date of redemption of any Debenture shall not be a Business Day, then payment of interest or principal may (subject to Section 2.5(b)) be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date.

Section 15.9. Conflict with Trust Indenture Act. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

Section 15.10. Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 15.11. Separability. In case any one or more of the provisions contained in this Indenture or in the Debentures shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of the Debentures, but this Indenture and the Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 15.12. Assignment. The Company shall have the right at all times to assign any of its respective rights or obligations under this Indenture to a direct or indirect wholly owned Subsidiary of the Company, provided that, in the event of any such assignment, the Company shall remain liable for all such obligations. Subject to the foregoing, this Indenture is binding upon and inures to the benefit of the parties thereto and their respective successors and assigns. This Indenture may not otherwise be assigned by the parties thereto.

Section 15.13. Acknowledgment of Rights; Right of Setoff. (a) The Company acknowledges that, with respect to any Debentures held by the Trust or a trustee of the Trust, if the Property Trustee fails to enforce its rights under this Indenture as the holder of the Debentures held as the assets of the Trust, any holder of Preferred Securities may institute legal proceedings directly against the Company to enforce such Property Trustee's rights under this Indenture without first instituting any legal proceedings against such Property Trustee or any other person or entity. Notwithstanding the foregoing, and notwithstanding the provisions of Section 7.4(a) hereof, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay principal or interest on the Debentures on the date such principal or interest



is otherwise payable (or in the case of redemption, on the redemption date), the Company acknowledges that a holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such holder on or after the respective due date specified in the Debentures.

(b) Notwithstanding anything to the contrary contained in this Indenture, the Company shall have the right to setoff any payment it is otherwise required to make hereunder in respect of any Trust Securities to the extent that the Company has previously made, or is concurrently making, a payment to the holder of such Trust Securities under the Preferred Securities Guarantee or in connection with a proceeding for enforcement of payment of the principal of or interest on the Debentures directly brought by holders of any Trust Securities.

## ARTICLE XVI

### SUBORDINATION OF THE DEBENTURES

Section 16.1. Agreement to Subordinate. The Company covenants and agrees, and each holder of the Debentures issued hereunder by such holder's acceptance thereof likewise covenants and agrees, that all the Debentures shall be issued subject to the provisions of this Article XVI; and each holder of a Debenture, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions. The payment by the Company of the principal of and interest on all the Debentures issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Debt, Subordinated Debt and Additional Senior Obligations of the Company (collectively, "Senior Indebtedness") to the extent provided herein, whether outstanding at the date of this Indenture or thereafter incurred. No provision of this Article XVI shall prevent the occurrence of any default or Event of Default hereunder. In no event shall the Debentures be subordinate to the Company's: (i) trade accounts payable, (ii) accrued liabilities arising in the ordinary course of business, or (iii) debt to any employee of the Company.

Section 16.2. Default on Senior Indebtedness. In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness, or in the event that the maturity of any Senior Indebtedness has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of or interest on the Debentures. In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding sentence of this Section 16.2, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, but only to the extent that the holders of the Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Senior Indebtedness

and only the amounts specified in such notice to the Trustee shall be paid to the holders of the Senior Indebtedness.

Section 16.3. Liquidation; Dissolution; Bankruptcy. (a) Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Indebtedness shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on account of the principal or interest on the Debentures; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the holders of the Debentures or the Trustee would be entitled to receive from the Company, except for the provisions of this Article XVI, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the holders of the Debentures or by the Trustee 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, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the holders of the Debentures or to the Trustee.

(b) In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee before all Senior Indebtedness is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Indebtedness, as the case may be, remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness.

(c) For purposes of this Article XVI, 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 XVI with respect to the Debentures to the payment of all Senior Indebtedness, as the case may be, that may at the time be outstanding, provided that (i) such Senior Indebtedness is assumed by the new corporation, if any, resulting from any such reorganization or readjustment;

and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article XII shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 16.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article XII. Nothing in Section 16.2 or in this Section 16.3 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 9.7.

Section 16.4. Subrogation. (a) Subject to the payment in full of all Senior Indebtedness, the rights of the holders of the Debentures shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Indebtedness until the principal of and interest on the Debentures shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the holders of the Debentures or the Trustee would be entitled except for the provisions of this Article XVI, and no payment over pursuant to the provisions of this Article XVI to or for the benefit of the holders of such Senior Indebtedness by holders of the Debentures or the Trustee, shall, as between the Company, its creditors (other than holders of Senior Indebtedness of the Company), and the holders of the Debentures, be deemed to be a payment by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article XVI are and are intended solely for the purposes of defining the relative rights of the holders of the Debentures, on the one hand, and the holders of such Senior Indebtedness on the other hand.

(b) Nothing contained in this Article XVI or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Company, its creditors (other than the holders of Senior Indebtedness), and the holders of the Debentures, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Debentures the principal of and interest on the Debentures as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Debentures and creditors of the Company, as the case may be, other than the holders of Senior Indebtedness, as the case may be, nor shall anything herein or therein prevent the Trustee or the holder of any Debenture from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XVI of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

(c) Upon any payment or distribution of assets of the Company referred to in this Article XVI, the Trustee, subject to the provisions of Article IX, and the holders of the Debentures shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to

the holders of the Debentures, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XVI.

Section 16.5. The Trustee to Effectuate Subordination. Each holder of Debentures by such holder's acceptance thereof authorizes and directs the Trustee on such holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XVI and appoints the Trustee such holder's attorney-in-fact for any and all such purposes.

Section 16.6. Notice by the Company. (a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of money to or by the Trustee in respect of the Debentures pursuant to the provisions of this Article XVI. Notwithstanding the provisions of this Article XVI or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of money to or by the Trustee in respect of the Debentures pursuant to the provisions of this Article XVI, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Indebtedness or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 9.1, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 16.6 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of or interest on any Debenture), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee, subject to the provisions of Section 9.1, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself or herself 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 holder of such Senior Indebtedness or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of such Senior Indebtedness to participate in any payment or distribution pursuant to this Article XVI, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XVI, 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 16.7. Rights of the Trustee; Holders of the Senior Indebtedness.

(a) The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XVI in respect

of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder. The Trustee's right to compensation and reimbursement of expenses as set forth in Section 9.7 shall not be subject to the subordination provisions of Article XVI.

(b) With respect to the holders of the 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 XVI, and no implied covenants or obligations with respect to the holders of such Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Indebtedness and, subject to the provisions of Section 9.1, the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to holders of Debentures, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article XVI or otherwise.

Section 16.8. Subordination May Not Be Impaired. (a) 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 that any such holder may have or otherwise be charged with.

(b) Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the holders of the Debentures, without incurring responsibility to the holders of the Debentures and without impairing or releasing the subordination provided in this Article XVI or the obligations hereunder of the holders of the Debentures to the holders of such Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (iii) release any Person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

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

FIRST BUSEY CORPORATION

By: \_\_\_\_\_  
Name: Douglas C. Mills  
Title: Chief Executive Officer and  
Chairman of the Board

ATTEST:

\_\_\_\_\_

WILMINGTON TRUST COMPANY, as trustee

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

ATTEST:

\_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF CHAMPAIGN )

On this \_\_\_\_ day of \_\_\_\_\_, 2001, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of First Busey Corporation, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

\_\_\_\_\_  
Notary Public

My term expires:\_\_\_\_\_

STATE OF DELAWARE )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2001, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of Wilmington Trust Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said \_\_\_\_\_, acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said county and commonwealth the day and year last above written.

\_\_\_\_\_  
Notary Public

My term expires:\_\_\_\_\_

## EXHIBIT A

(Form of Face of Debenture)

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

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

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

## FIRST BUSEY CORPORATION

\_\_\_\_\_% SUBORDINATED DEBENTURE DUE 2031

First Busey Corporation, a Nevada corporation (the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Wilmington Trust Company, as Property Trustee for First Busey Capital Trust I, or registered assigns, the principal sum of \_\_\_\_\_ (\$\_\_\_\_\_) on June \_\_, 2031 (the "Stated Maturity"), and to pay interest on said principal sum from June \_\_, 2001, or from the most recent interest payment date (each such date, an "Interest Payment Date") to which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on March 30, June 30, September 30 and December 30 of each year commencing September 30, 2001, at the rate of \_\_\_\_% per annum until the principal hereof shall have become due and payable, and on any overdue principal and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded quarterly. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of interest for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. In the event that any date on which interest is payable on this Debenture is not a business day, then payment of interest payable on such date shall be made on the next succeeding day that is a business day (and without any interest or other payment in respect of any such delay) except that, if such business day is in the next succeeding calendar year, payment of such interest will be made on the immediately preceding business day, in each case, with the same force and effect as if made on such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the person in whose name this Debenture (or one or more Predecessor Debentures, as defined in said Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the business day next preceding such Interest Payment Date unless otherwise provided in the Indenture. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered holders on such regular record date and may be paid to the Person in whose name this Debenture (or one or more Predecessor Debentures) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted interest, notice thereof shall be fixed by the Trustee for the payment of such defaulted interest, notice thereof shall be given to the registered holders of the Debentures not less than 10 days



prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange or quotation system on or in which the Debentures may be listed or quoted, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. The principal of and the interest on this Debenture shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered holder at such address as shall appear in the Debenture Register. Notwithstanding the foregoing, so long as the holder of this Debenture is the Property Trustee, the payment of the principal of and interest on this Debenture shall be made at such place and to such account as may be designated by the Trustee.

The Stated Maturity may be shortened at any time by the Company to any date not earlier than June \_\_, 2006, subject to the Company having received prior approval of the Federal Reserve if then required under applicable capital guidelines, policies or regulations of the Federal Reserve.

The indebtedness evidenced by this Debenture is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness (as defined in the Indenture). This Debenture is issued subject to the provisions of the Indenture with respect thereto. Each holder of this Debenture, by accepting the same, (a) agrees to and shall be bound by such provisions; (b) authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided; and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Debenture shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Debenture are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed.

Dated: \_\_\_\_\_, 2001

FIRST BUSEY CORPORATION

By: \_\_\_\_\_  
Name: Douglas C. Mills  
Title: Chief Executive Officer and  
Chairman of the Board

ATTEST:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This is one of the Debentures described in the within-mentioned Indenture.

Dated: \_\_\_\_\_, 2001

WILMINGTON TRUST COMPANY,  
as Trustee or Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
Authorized Signatory

## [Form of Reverse of Debenture]

\_\_\_% SUBORDINATED DEBENTURE DUE 2031  
(continued)

This Debenture is one of the subordinated debentures of the Company (herein sometimes referred to as the "Debentures"), all issued or to be issued under and pursuant to an Indenture dated as of June \_\_, 2001 (the "Indenture") duly executed and delivered between the Company and Wilmington Trust Company, as Trustee (the "Trustee"), to which Indenture reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Debentures. The Debentures are limited in aggregate principal amount as specified in the Indenture.

Because of the occurrence and continuation of a Special Event (as defined in the Indenture), in certain circumstances, this Debenture may become due and payable at the principal amount together with any interest accrued thereon (the "Redemption Price"). The Redemption Price shall be paid prior to 12:00 noon, Eastern Standard Time, on the date of such redemption or at such earlier time as the Company determines. The Company shall have the right as set forth in the Indenture to redeem this Debenture at the option of the Company, without premium or penalty, in whole or in part at any time on or after June \_\_, 2006 (an "Optional Redemption"), or at any time in certain circumstances upon the occurrence of a Special Event, at a Redemption Price equal to 100% of the principal amount hereof plus any accrued but unpaid interest hereon, to the date of such redemption. Any redemption pursuant to this paragraph shall be made upon not less than 30 days' nor more than 60 days' notice, at the Redemption Price. The Redemption Price shall be paid at the time and in the manner provided therefor in the Indenture. If the Debentures are only partially redeemed by the Company pursuant to an Optional Redemption, the Debentures shall be redeemed pro rata or by lot or by any other method utilized by the Trustee as described in the Indenture. In the event of an Optional Redemption of this Debenture in part only, a new Debenture or Debentures for the unredeemed portion hereof shall be issued in the name of the holder hereof upon the cancellation hereof.

In case an Event of Default (as defined in the Indenture) shall have occurred and be continuing, the principal of all of the Debentures may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the Debentures at the time Outstanding (as defined in the Indenture), to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Debentures; provided, however, that no such supplemental indenture shall, except as provided in the Indenture, (i) extend the fixed maturity of the Debentures, reduce the principal amount thereof, or reduce the rate or extend the time of

payment of interest thereon without the consent of the holder of each Debenture so affected thereby; or (ii) reduce the aforesaid percentage of the Debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holder of each Debenture then Outstanding and so affected thereby. The Indenture also contains provisions permitting the holders of a majority in aggregate principal amount of the Debentures at the time Outstanding, on behalf of all of the holders of the Debentures, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture, and its consequences, except a default in the payment of the principal of or interest on any of the Debentures. Any such consent or waiver by the registered holder of this Debenture (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Debenture and of any Debenture issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Debenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal and interest on this Debenture at the time and place and at the rate and in the money herein prescribed.

The Company, as further described in the Indenture, shall have the right at any time during the term of the Debentures and from time to time to defer payments of interest by extending the interest payment period of such Debentures for up to 20 consecutive quarters (each, an "Extension Period"), at the end of which period the Company shall pay all interest then accrued (together with interest thereon at the rate specified for the Debentures to the extent that payment of such interest is enforceable under applicable law). Before the termination of any such Extension Period, so long as no Event of Default shall have occurred and be continuing, the Company may further extend such Extension Period, provided that such Extension Period together with all such further extensions thereof shall not exceed 20 consecutive quarters, extend beyond June \_\_, 2031, or end on a date other than an Interest Payment Date. At the termination of any such Extension Period and upon the payment of all Deferred Payments then due and subject to the foregoing conditions, the Company may commence a new Extension Period.

As provided in the Indenture and subject to certain limitations therein set forth, this Debenture is transferable by the registered holder hereof on the Debenture Register (as defined in the Indenture) of the Company, upon surrender of this Debenture for registration of transfer at the office or agency of the Trustee accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new Debentures of authorized denominations and for the same aggregate principal amount shall be issued to the designated transferee or transferees. No service charge shall be made for any such transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Debenture, the Company, the Trustee, any Paying Agent (as defined in the Indenture) and the Debenture Registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Debenture Registrar) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any Paying Agent nor any Debenture Registrar shall be affected by any notice to the contrary.

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

The Debentures are issuable only in registered form without coupons in denominations of \$10 and any integral multiple thereof (or such other denominations and any integral multiple thereof as may be deemed necessary by the Company for the purpose of maintaining the eligibility of the Debentures for listing on the Nasdaq National Market or any successor thereto).

All terms used in this Debenture that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

CERTIFICATE OF TRUST  
OF  
FIRST BUSEY CAPITAL TRUST I

THIS CERTIFICATE OF TRUST OF FIRST BUSEY CAPITAL TRUST I (the "Trust"), is being duly executed and filed by Wilmington Trust Company, a Delaware banking corporation, Douglas C. Mills, Barbara J. Kuhl, and Barbara J. Jones, each an individual, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 et seq.) (the "Act").

1. NAME. The name of the business trust formed hereby is First Busey Capital Trust I.

2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust in the State of Delaware is Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration.

3. EFFECTIVE DATE. This Certificate of Trust shall be effective on May 15, 2001.

IN WITNESS WHEREOF, each of the undersigned, being a trustee of the Trust, has executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

WILMINGTON TRUST COMPANY, as Trustee

By /s/ Kathleen A. Pedelini

Name: Kathleen A. Pedelini  
-----

Title: Administrative Account Manager  
-----

/s/ Douglas C. Mills  
-----  
Douglas C. Mills, as Administrative Trustee

/s/ Barbara J. Kuhl  
-----  
Barbara J. Kuhl, as Administrative Trustee

/s/ Barbara J. Jones  
-----  
Barbara J. Jones, as Administrative Trustee



## TRUST AGREEMENT

TRUST AGREEMENT, dated as of May 15, 2001 by and between First Busey Corporation, a Nevada corporation, as "Depositor," and Wilmington Trust Company, a Delaware banking corporation, as "Trustee."

Section 1. The Trust. The trust created hereby shall be known as First Busey Capital Trust I (the "Trust"), in which name the Trustee, or the Depositor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

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

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

Section 4. Certain Authorizations. The Depositor and the Trustee hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to such 1933 Act Registration Statement (including the prospectus and exhibits contained therein), relating to the registration under the Securities Act of 1933, as amended, of the preferred securities of the Trust (the "Preferred Securities") and certain other securities of the Depositor and (b) a Registration Statement on Form 8-A (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust under the Securities Exchange Act of 1934, as amended; (ii) to file with the Nasdaq National Market and execute on behalf of the Trust a listing application or applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the Nasdaq National Market; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and

other papers and documents as the Depositor, on behalf of the Trust, may deem necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws; and (iv) to execute on behalf of the Trust such Underwriting Agreements with one or more underwriters relating to the offering of the Preferred Securities as the Depositor, on behalf of the Trust, may deem necessary or desirable. In the event that any filing referred to in clauses (i), (ii) and (iii) above is required by the rules and regulations of the Commission, the Nasdaq National Market or state securities or "Blue Sky" laws to be executed on behalf of the Trust by a Trustee, the Depositor and any Trustee appointed pursuant to Section 6 hereof are hereby authorized to join in any such filing and to execute on behalf of the Trust any and all of the foregoing.

Section 5. Counterparts. This Trust Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 6. Trustee. The number of Trustees initially shall be one and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor, which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall be either a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. The Trustee may resign upon thirty days' prior notice to the Depositor.

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

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

FIRST BUSEY CORPORATION as Depositor

By /s/ Douglas C. Mills

-----  
Name: Douglas C. Mills  
Title: Chief Executive Officer and  
Chairman of the Board

WILMINGTON TRUST COMPANY, as Trustee

By /s/ Kathleen A. Pedelini

-----

Name: Kathleen A. Pedelini

-----

Title: Administrative Account Manager

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FIRST BUSEY CAPITAL TRUST I

AMENDED AND RESTATED TRUST AGREEMENT

among

FIRST BUSEY CORPORATION, as Depositor

WILMINGTON TRUST COMPANY, as Property Trustee

WILMINGTON TRUST COMPANY, as Delaware Trustee,

and

THE ADMINISTRATIVE TRUSTEES NAMED HEREIN

Dated as of June \_\_, 2001

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

## AMENDED AND RESTATED TRUST AGREEMENT

AMENDED AND RESTATED TRUST AGREEMENT, dated as of June \_\_, 2001, among (a) FIRST BUSEY CORPORATION, a Nevada corporation (including any successors or assigns, the "Depositor"), (b) WILMINGTON TRUST COMPANY, a Delaware banking corporation duly organized and existing under the laws of Delaware, as property trustee (the "Property Trustee" and, in its separate corporate capacity and not in its capacity as Property Trustee, the "Bank"), (c) WILMINGTON TRUST COMPANY, a Delaware banking corporation duly organized and existing under the laws of the State of Delaware, as Delaware trustee (the "Delaware Trustee," and, in its separate corporate capacity and not in its capacity as Delaware Trustee, the "Delaware Bank"), (d) Douglas C. Mills, an individual, Barbara J. Kuhl, an individual, and Barbara J. Jones, an individual, each of whose address is c/o First Busey Corporation, 201 West Main Street, Urbana, Illinois 61801 (each an "Administrative Trustee" and collectively the "Administrative Trustees") (the Property Trustee, the Delaware Trustee and the Administrative Trustees referred to collectively as the "Trustees"), and (e) the several Holders (as hereinafter defined).

## RECITALS

WHEREAS, the Depositor, the Delaware Trustee, and Douglas C. Mills, Barbara J. Kuhl and Barbara J. Jones, each as an Administrative Trustee, have heretofore duly declared and established a business trust pursuant to the Delaware Business Trust Act (as hereinafter defined) by the entering into of that certain Trust Agreement, dated as of May 15, 2001 (the "Original Trust Agreement"), and by the execution and filing by the Delaware Trustee, the Depositor and the Administrative Trustees with the Secretary of State of the State of Delaware of the Certificate of Trust, filed on May 15, 2001, the form of which is attached as Exhibit A; and

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

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

## ARTICLE I

## DEFINED TERMS

Section 101. Definitions. For all purposes of this Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article I have the meanings assigned to them in this Article I and include the plural as well as the singular;

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

(c) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Trust Agreement; and

(d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

"Act" has the meaning specified in Section 608.

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

"Additional Payments" has the meaning specified in Section 1.1 of the Indenture.

"Administrative Trustee" means each of Douglas C. Mills, Barbara J. Kuhl and Barbara J. Jones, solely in his or her capacity as Administrative Trustee of the Trust formed and continued hereunder and not in his or her individual capacity, or such Administrative Trustee's successor in interest in such capacity, or any successor trustee appointed as herein provided.

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

"Authenticating Agent" means an authenticating agent with respect to the Preferred Securities appointed by the Property Trustee pursuant to Section 503.

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

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

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

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

"Bankruptcy Laws" has the meaning specified in Section 1009.

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

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

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

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

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

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

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

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

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

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

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

"Common Security" means an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount of \$10 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"Company" means First Busey Corporation, a Nevada corporation and registered bank holding company under the Bank Holding Company Act of 1956, as amended.

"Corporate Trust Office" means the office at which, at any particular time, the corporate trust business of the Property Trustee or the Debenture Trustee, as the case may be, shall be principally administered, which office at the date hereof, in each such case, is located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware, Attention: Corporate Trust Administration.

"Debenture Event of Default" means an "Event of Default" as defined in Section 7.1 of the Indenture.

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

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

"Debenture Trustee" means Wilmington Trust Company, a banking corporation organized under the laws of the State of Delaware and any successor thereto, as trustee under the Indenture.

"Debentures" means the \$20,618,560 (or \$23,711,340 if the Underwriters exercise their Option as such term is defined in the Underwriting Agreement) aggregate principal amount of the Depositor's \_\_\_% Subordinated Debentures due 2031, issued pursuant to the Indenture.

"Definitive Preferred Securities Certificates" means Preferred Securities Certificates issued in certificated, fully registered form as provided in Section 511.

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

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

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

"Depository" means DTC or any successor thereto.

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

"Distribution Date" has the meaning specified in Section 401(a).

"Distributions" means amounts payable in respect of the Trust Securities as provided in Section 401.

"DTC" means The Depository Trust Company.

"Early Termination Event" has the meaning specified in Section 902.

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

- (a) the occurrence of a Debenture Event of Default; or

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

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

(d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in this Trust Agreement (other than a covenant or warranty a default in the performance of which or the breach of which is dealt with in clause (b) or (c), above) and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting Trustee or Trustees by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Preferred Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(e) the occurrence of a Bankruptcy Event with respect to the Property Trustee and the failure by the Depositor to appoint a successor Property Trustee within 60 days thereof.

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

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

"Expiration Date" has the meaning specified in Section 901.

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

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

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

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

"Indenture" means the Indenture, dated as of June \_\_, 2001, between the Depositor and the Debenture Trustee, as trustee, as amended or supplemented from time to time, pertaining to the Debentures of the Depositor.

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

"Investment Company Event" means the receipt by the Trust and the Depositor of an Opinion of Counsel, rendered by a law firm having a recognized national tax and securities law practice within a reasonable period of time after the applicable occurrence, to the effect that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), the Trust is or shall be considered an "investment company" that is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after the date of original issuance of the Preferred Securities under this Trust Agreement.

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

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

"Liquidation Amount" means the stated amount of \$10 per Trust Security.

"Liquidation Date" means the date on which Debentures are to be distributed to Holders of Trust Securities in connection with a termination and liquidation of the Trust pursuant to Section 904(a).

"Liquidation Distribution" has the meaning specified in Section 904(d).

"Officers' Certificate" means a certificate signed by the President and Chief Executive Officer or a Senior Vice President and by the Treasurer or an Assistant Treasurer or the Controller or an Assistant Controller or the Secretary or an Assistant Secretary of the Depositor, and delivered to the appropriate Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 816 shall be the principal executive, financial or accounting officer of the Depositor. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Trust Agreement shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;



(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

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

"Option" has the meaning specified in the Underwriting Agreement.

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

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

(a) the Preferred Securities theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;

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

(c) the Preferred Securities which have been paid or in exchange for or in lieu of which other Preferred Securities have been executed and delivered pursuant to Sections 504, 505, 511 and 514; provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Preferred Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the Preferred Securities owned by the Depositor, any Trustee or any Affiliate of the Depositor or any Trustee shall be disregarded and deemed not to be Outstanding, except that (i) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only the Preferred Securities that such Trustee knows to be so owned shall be so disregarded; and (ii) the foregoing shall not apply at any time when all of the Outstanding Preferred Securities are owned by the Depositor, one or more of the Trustees and/or any such Affiliate. The Preferred Securities so owned which have been pledged in good faith may be regarded as

Outstanding if the pledgee establishes to the satisfaction of the Administrative Trustees the pledgee's right so to act with respect to such Preferred Securities and the pledgee is not the Depositor or any other Obligor upon the Preferred Securities or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Depositor or any Affiliate of the Depositor.

"Paying Agent" means any paying agent or co-paying agent appointed pursuant to Section 509 and shall initially be the Bank.

"Payment Account" means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee with the Bank in its trust department for the benefit of the Securityholders in which all amounts paid in respect of the Debentures shall be held and from which the Property Trustee shall make payments to the Securityholders in accordance with Sections 401 and 402.

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

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

"Preferred Security" means an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount of \$10 and having the rights provided therefor in this Trust Agreement, including the right to receive Distributions and a Liquidation Distribution as provided herein.

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

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

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

"Relevant Trustee" shall have the meaning specified in Section 810.

"Securities Register" and "Securities Registrar" have the respective meanings specified in Section 504.

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

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

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

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

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

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

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

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

"Underwriting Agreement" means the Underwriting Agreement, dated as of June \_\_, 2001, among the Trust, the Depositor, Howe Barnes Investments, Inc. and Stephens Inc., as representatives of the several Underwriters named therein, and the Underwriters named therein.

"Underwriters" shall have the meaning specified in the Underwriting Agreement.

## ARTICLE II

## ESTABLISHMENT OF THE TRUST

Section 201. Name. The Trust continued hereby shall be known as "First Busey Capital Trust I," as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Trust Securities and the other Trustees, in which name the Trustees may engage in the transactions contemplated hereby, make and execute contracts and other instruments on behalf of the Trust and sue and be sued.

Section 202. Office of the Delaware Trustee; Principal Place of Business. The address of the Delaware Trustee in the State of Delaware is c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Securityholders and the Depositor. The principal executive office of the Trust is c/o First Busey Corporation, 201 West Main Street, Urbana, Illinois 61801, Attention: Chief Executive Officer.

Section 203. Initial Contribution of Trust Property; Organizational Expenses. The Trustees acknowledge receipt in trust from the Depositor in connection with the Original Trust Agreement of the sum of \$10, which constituted the initial Trust Property. The Depositor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Depositor shall make no claim upon the Trust Property for the payment of such expenses.

Section 204. Issuance of the Preferred Securities. On June \_\_, 2001, the Depositor, on behalf of the Trust and pursuant to the Original Trust Agreement, executed and delivered the Underwriting Agreement. Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 502, and deliver in accordance with the Underwriting Agreement, Preferred Securities Certificates, registered in the name of the Persons entitled thereto, in an aggregate amount of 2,000,000 Preferred Securities having an aggregate Liquidation Amount of \$20,000,000 against receipt of the aggregate purchase price of such Preferred Securities of \$20,000,000, which amount such Administrative Trustee shall promptly deliver to the Property Trustee. If the Underwriters exercise their Option and there is an Option Closing Date (as such term is defined in the Underwriting Agreement), then an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 502, and deliver in accordance with the Underwriting Agreement, Preferred Securities Certificates, registered in the name of the Persons entitled thereto in an aggregate amount of up to 300,000 Preferred Securities having an aggregate Liquidation Amount of up to \$3,000,000 against receipt of the aggregate purchase price of such Preferred Securities of up to \$3,000,000, which amount such Administrative Trustee shall promptly deliver to the Property Trustee.

Section 205. Issuance of the Common Securities; Subscription and Purchase of the Debentures. (a) Contemporaneously with the execution and delivery of this Trust Agreement, an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 502

and deliver to the Depositor, Common Securities Certificates, registered in the name of the Depositor, in an aggregate amount of 61,856 Common Securities having an aggregate Liquidation Amount of \$618,560 against payment by the Depositor of such amount. Contemporaneously therewith, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Depositor Debentures, registered in the name of the Property Trustee on behalf of the Trust and having an aggregate principal amount equal to \$20,618,560, and, in satisfaction of the purchase price for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor the sum of \$20,618,560.

(b) If the Underwriters exercise the Option and there is an Option Closing Date, then an Administrative Trustee, on behalf of the Trust, shall execute in accordance with Section 502 and deliver to the Depositor, Common Securities Certificates, registered in the name of the Depositor, in an additional aggregate amount of up to 9,278 Common Securities having an aggregate Liquidation Amount of up to \$92,780 against payment by the Depositor of an amount equal to the product of \$10 multiplied by the number of additional Common Securities purchased by Depositor. Contemporaneously therewith, an Administrative Trustee, on behalf of the Trust, shall subscribe to and purchase from the Depositor, additional Debentures, registered in the name of the Property Trustee on behalf of the Trust and having an aggregate principal amount of up to \$3,092,780, and, in satisfaction of the purchase price of such Debentures, the Property Trustee, on behalf of the Trust, shall deliver to the Depositor up to \$3,092,780, such aggregate amount to be equal to the sum of the amounts received from the Depositor pursuant to the first sentence of this Section 205(b) and from one of the Administrative Trustees pursuant to the last sentence of Section 204.

Section 206. Declaration of Trust. The exclusive purposes and functions of the Trust are (a) to issue and sell Trust Securities and use the proceeds from such sale to acquire the Debentures; and (b) to engage in those activities necessary, advisable or incidental thereto. The Depositor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it shall hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Securityholders. The Administrative Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Property Trustee or the Administrative Trustees set forth herein. The Delaware Trustee shall be one of the Trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Business Trust Act.

Section 207. Authorization to Enter into Certain Transactions. (a) The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in paragraph (b) of this Section 207 and Article VIII, and in accordance with the following provisions (i) and (ii), the Administrative Trustees shall have the authority to enter into all transactions and agreements determined by the Administrative Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Administrative Trustees under this Trust Agreement, and to perform all acts in furtherance thereof, including without limitation, the following:

(i) As among the Trustees, each Administrative Trustee, acting singly or jointly, shall have the power and authority to act on behalf of the Trust with respect to the following matters:

(A) the issuance and sale of the Trust Securities and the compliance with the Underwriting Agreement in connection therewith;

(B) to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, the Expense Agreement and such other agreements or documents as may be necessary or desirable in connection with the purposes and function of the Trust;

(C) assisting in the registration of the Preferred Securities under the Securities Act of 1933, as amended, and under state securities or blue sky laws, and the qualification of this Trust Agreement as a trust indenture under the Trust Indenture Act;

(D) assisting in the listing of the Preferred Securities upon the Nasdaq National Market or such securities exchange or exchanges as shall be determined by the Depositor and the registration of the Preferred Securities under the Exchange Act, and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

(E) the sending of notices (other than notices of default) and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;

(F) the appointment of a Paying Agent, Authenticating Agent and Securities Registrar in accordance with this Trust Agreement;

(G) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;

(H) the taking of all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Preferred Securities or to enable the Trust to effect the purposes for which the Trust was created; and

(I) the taking of any action incidental to the foregoing as the Administrative Trustees may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement for the benefit of the

Securityholders (without consideration of the effect of any such action on any particular Securityholder).

(ii) As among the Trustees, the Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:

(A) the establishment of the Payment Account;

(B) the receipt of the Debentures;

(C) the collection of interest, principal and any other payments made in respect of the Debentures in the Payment Account;

(D) the distribution of amounts owed to the Securityholders in respect of the Trust Securities in accordance with the terms of this Trust Agreement;

(E) the exercise of all of the rights, powers and privileges of a holder of the Debentures;

(F) the sending of notices of default and other information regarding the Trust Securities and the Debentures to the Securityholders in accordance with this Trust Agreement;

(G) the distribution of the Trust Property in accordance with the terms of this Trust Agreement;

(H) to the extent provided in this Trust Agreement, the winding up of the affairs of and liquidation of the Trust;

(I) after an Event of Default, the taking of any action incidental to the foregoing as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement and protect and conserve the Trust Property for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder);

(J) registering transfers of the Trust Securities in accordance with this Trust Agreement; and

(K) except as otherwise provided in this Section 207(a)(ii), the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 207(a)(i).

(b) So long as this Trust Agreement remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustees shall not (i) acquire any investments or engage in any activities not authorized by this Trust Agreement;

(ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Securityholders, except as expressly provided herein; (iii) take any action that would cause the Trust to fail or cease to qualify as a "grantor trust" for United States federal income tax purposes; (iv) incur any indebtedness for borrowed money or issue any other debt; or (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property. The Administrative Trustees shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Securityholders in their capacity as Securityholders.

(c) In connection with the issue and sale of the Preferred Securities, the Depositor shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Depositor in furtherance of the following prior to the date of this Trust Agreement are hereby ratified and confirmed in all respects):

(i) the preparation and filing by the Trust with the Commission and the execution on behalf of the Trust of a registration statement on the appropriate form in relation to the Preferred Securities, the Debentures, and the Guarantee including any amendments thereto;

(ii) the determination of the states in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by or on behalf of the Trust, and advise the Trustees of actions they must take on behalf of the Trust, and prepare for execution and filing any documents to be executed and filed by the Trust or on behalf of the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such states;

(iii) the preparation for filing by the Trust and execution on behalf of the Trust of an application to the American Stock Exchange or a national stock exchange or other organization for listing or quotation upon notice of issuance of any Preferred Securities and to file or cause an Administrative Trustee to file thereafter with such exchange or organization such notifications and documents as may be necessary from time to time;

(iv) the preparation for filing by the Trust with the Commission and the execution on behalf of the Trust of a registration statement on Form 8-A relating to the registration of the Preferred Securities under Section 12(b) or 12(g) of the Exchange Act, including any amendments thereto;

(v) the negotiation of the terms of, and the execution and delivery of, the Underwriting Agreement providing for the sale of the Preferred Securities; and

(vi) the taking of any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Administrative Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the



Trust shall not be deemed to be an "investment company" required to be registered under the Investment Company Act, shall be classified as a "grantor trust" and not as an association taxable as a corporation for United States federal income tax purposes and so that the Debentures shall be treated as indebtedness of the Depositor for United States federal income tax purposes. In this connection, subject to Section 1002, the Depositor and the Administrative Trustees are authorized to take any action and the Administrative Trustees are authorized to direct the Property Trustee in writing to take any action, not inconsistent with applicable law or this Trust Agreement, that each of the Depositor and the Administrative Trustees determines in their discretion to be necessary or desirable for such purposes but in no event shall the Depositor, Administrative Trustee, or Property Trustee have the power to take any action, permit any action to be taken, or refrain to act in such a manner, that could cause the Trust to not be treated as a grantor trust for federal income tax purposes. The Property Trustee shall take any action so directed by one or more of the Administrative Trustees.

Section 208. Assets of Trust. The assets of the Trust shall consist of the Trust Property.

Section 209. Title to Trust Property. Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee for the benefit of the Securityholders in accordance with this Trust Agreement.

### ARTICLE III

#### PAYMENT ACCOUNT

Section 301. Payment Account. (a) On or prior to the Closing Date, the Property Trustee shall establish the Payment Account. The Property Trustee and any agent of the Property Trustee shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits and withdrawals from the Payment Account in accordance with this Trust Agreement. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee in the Payment Account for the exclusive benefit of the Securityholders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

(b) The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or interest on, and any other payments or proceeds with respect to, the Debentures. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

### ARTICLE IV

#### DISTRIBUTIONS; REDEMPTION

Section 401. Distributions. (a) Distributions on the Trust Securities shall be cumulative, and shall accumulate whether or not there are funds of the Trust available for the payment of

Distributions. Distributions shall accumulate from the date of issuance of the Trust Securities, and, except during any Extended Interest Period with respect to the Debentures, shall be payable quarterly in arrears on March 30, June 30, September 30 and December 30 of each year, commencing on September 30, 2001. If any date on which a Distribution is otherwise payable on the Trust Securities is not a Business Day, then the payment of such Distribution shall be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction in interest or any other payment in respect of any such acceleration), in each case with the same force and effect as if made on such date (each date on which distributions are payable in accordance with this Section 401(a), a "Distribution Date").

(b) The Trust Securities represent undivided beneficial interests in the Trust Property. Distributions on the Trust Securities shall be payable at a rate of \_\_\_% per annum of the Liquidation Amount of the Trust Securities. The amount of Distributions payable for any full period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. During any Extended Interest Period with respect to the Debentures, Distributions on the Preferred Securities shall be deferred for a period equal to the Extended Interest Period. The amount of Distributions payable for any period shall include the Additional Amounts, if any.

(c) Distributions on the Trust Securities shall be made by the Property Trustee solely from the Payment Account and shall be payable on each Distribution Date only to the extent that the Trust has funds then on hand and immediately available by 12:30 p.m. on each Distribution Date in the Payment Account for the payment of such Distributions.

(d) Distributions on the Trust Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be the 15th day of March, June, September or December for Distributions payable on the last calendar day of the respective month; provided, however, that for any Trust Securities held in global form, Distributions shall be payable to the Holder thereof as of one Business Day immediately preceding the Distribution Date.

Section 402. Redemption. (a) Only on each Debenture Redemption Date and at maturity of the Debentures shall the Trust be required to redeem a Like Amount of Trust Securities at the Redemption Price.

(b) Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Securities Register. The Property Trustee shall have no responsibility for the accuracy of any CUSIP number contained in such notice. All notices of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) the CUSIP number;

(iv) if less than all the Outstanding Trust Securities are to be redeemed, the identification and the aggregate Liquidation Amount of the particular Trust Securities to be redeemed;

(v) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Trust Security to be redeemed and that Distributions thereon shall cease to accumulate on and after said date, except as provided in Section 402(d); and

(vi) the place or places at which Trust Securities are to be surrendered for the payment of the Redemption Price.

(c) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption of the Debentures. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has immediately available funds then on hand and available in the Payment Account for the payment of such Redemption Price.

(d) If the Property Trustee gives a notice of redemption in respect of any Preferred Securities, then, by 12:00 noon, New York City time, on the Redemption Date, subject to Section 402(c), the Property Trustee, subject to Section 402(c), shall, with respect to Preferred Securities held in global form, deposit with the Clearing Agency for such Preferred Securities, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities. With respect to Trust Securities that are not held in global form, the Property Trustee, subject to Section 402(c), shall deposit with the Paying Agent funds sufficient to pay the applicable Redemption Price and shall give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders thereof upon surrender of their Preferred Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, (i) all rights of Securityholders holding Trust Securities so called for redemption shall cease, except the right of such Securityholders to receive the Redemption Price, but without interest, (ii) such Trust Securities shall cease to be Outstanding, (iii) the Clearing Agency for the Preferred Securities or its nominee, as the registered Holder of the Global Preferred Securities Certificate, shall receive a registered global certificate or certificates representing the Debentures to be delivered upon such distribution with respect to Preferred Securities held by the Clearing Agency or its nominee, and (iv) any Trust Securities Certificates not held by the Clearing Agency for the Preferred Securities or its nominee as specified in clause (iii) above will be deemed to represent Debentures having a principal amount equal to the stated Liquidation

Amount of the Trust Securities represented thereby and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on such Trust Securities until such certificates are presented to the Securities Registrar for transfer or reissuance. In the event that any date on which any Redemption Price is payable is not a Business Day, then payment of the Redemption Price payable on such date shall be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Depositor pursuant to the Guarantee, Distributions on such Trust Securities shall continue to accumulate, at the then applicable rate, from the Redemption Date originally established by the Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date shall be the date fixed for redemption for purposes of calculating the Redemption Price.

(e) Payment of the Redemption Price on the Trust Securities shall be made to the record holders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be the date 15 days prior to the relevant Redemption Date.

(f) Subject to Section 403(a), if less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Trust Securities to be redeemed shall be allocated on a pro rata basis (based on Liquidation Amounts) among the Common Securities and the Preferred Securities. The particular Preferred Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Preferred Securities not previously called for redemption, by such method (including, without limitation, by lot) as the Property Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to such Liquidation Amount or an integral multiple of such Liquidation Amount in excess thereof) of the Liquidation Amount of the Preferred Securities of a denomination larger than such Liquidation Amount; provided, however, that in the event the redemption relates only to Preferred Securities purchased and held by the Depositor being redeemed in exchange for a Like Amount of Debentures, the Property Trustee shall select those particular Preferred Securities for redemption. The Property Trustee shall promptly notify the Securities Registrar in writing of the Preferred Securities selected for redemption and, in the case of any Preferred Securities selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of the Preferred Securities shall relate, in the case of any Preferred Securities redeemed or to be redeemed only in part, to the portion of the Liquidation Amount of the Preferred Securities which has been or is to be redeemed.

Section 403. Subordination of the Common Securities. (a) Payment of Distributions (including Additional Amounts, if applicable) on, and the Redemption Price of, the Trust Securities, as applicable, shall be made, subject to Section 402(f), pro rata among the Common Securities and the Preferred Securities based on the Liquidation Amount of the Trust Securities;

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

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

Section 404. Payment Procedures. Payments of Distributions (including Additional Amounts, if applicable) in respect of the Preferred Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Preferred Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds, which will credit the relevant accounts on the applicable Distribution Dates. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Common Securityholder.

Section 405. Tax Returns and Reports. The Administrative Trustees shall prepare (or cause to be prepared), at the Depositor's expense, and file all United States federal, state and local tax and information returns and reports required to be filed by or in respect of the Trust. In this regard, the Administrative Trustees shall (a) prepare and file (or cause to be prepared and filed) the appropriate Internal Revenue Service forms required to be filed in respect of the Trust in each taxable year of the Trust; and (b) prepare and furnish (or cause to be prepared and furnished) to each Securityholder the appropriate Internal Revenue Service forms required to be furnished to such Securityholder or the information required to be provided on such forms. The Administrative Trustees shall provide the Depositor with a copy of all such returns and reports promptly after such filing or furnishing. The Property Trustee shall comply with United States federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to the Securityholders under the Trust Securities and the Securityholders shall provide any information required by the Property Trustee in connection with such requirements.

Section 406. Payment of Taxes, Duties, Etc. of the Trust. Upon receipt under the Debentures of Additional Payments, the Property Trustee, at the direction of an Administrative Trustee or the Depositor, shall promptly pay any taxes, duties or governmental charges of whatsoever nature (other than withholding taxes) imposed on the Trust by the United States or any other taxing authority.

Section 407. Payments under the Indenture. Any amount payable hereunder to any Holder of Preferred Securities shall be reduced by the amount of any corresponding payment such Holder has directly received under the Indenture pursuant to Section 514(b) or (c) hereof.

#### ARTICLE V

##### THE TRUST SECURITIES CERTIFICATES

Section 501. Initial Ownership. Upon the creation of the Trust and the contribution by the Depositor pursuant to Section 203 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are Outstanding, the Depositor shall be the sole beneficial owner of the Trust.

Section 502. The Trust Securities Certificates. The Preferred Securities Certificates shall be issued in minimum denominations of the Liquidation Amount and integral multiples of such Liquidation Amount in excess thereof, and the Common Securities Certificates shall be issued in denominations of the Liquidation Amount and integral multiples thereof. The Trust Securities Certificates shall be executed on behalf of the Trust by manual or facsimile signature of at least one Administrative Trustee. The Trust Securities Certificates bearing the manual or facsimile signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefits of this Trust Agreement, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such offices at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Securityholder, and shall be entitled to the rights and subject to the obligations of a Securityholder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Sections 504, 511 and 514.

Section 503. Execution, Authentication and Delivery of the Trust Securities Certificates. (a) On the Closing Date and, if applicable, the Option Closing Date, as such term is defined in the Underwriting Agreement, the Administrative Trustees shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 204 and 205, to be executed on behalf of the Trust by the manual or facsimile signature of at least one of the Administrative Trustees and delivered to or upon the written order of the Depositor, signed by its Chief Executive Officer, President, any Senior Vice President, the Treasurer or any Assistant Treasurer without further corporate action by the Depositor, in authorized denominations.

(b) A Preferred Securities Certificate shall not be valid until authenticated by the manual signature of an authorized signatory of the Property Trustee in substantially the form of

Exhibit E hereto. The signature shall be conclusive evidence that the Preferred Securities Certificate has been authenticated under this Trust Agreement. Each Preferred Security Certificate shall be dated the date of its authentication.

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

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

Section 503A. Global Preferred Security. (a) Any Global Preferred Security issued under this Trust Agreement shall be registered in the name of the nominee of the Clearing Agency and delivered to such custodian therefor, and such Global Preferred Security shall constitute a single Preferred Security for all purposes of this Trust Agreement.

(b) Notwithstanding any other provision in this Trust Agreement, no Global Preferred Security may be exchanged for Preferred Securities registered in the names of persons other than the Depository or its nominee unless (i) the Depository notifies the Administrative Trustees and Property Trustee in writing that it is unwilling or unable to continue as a depository for such Global Preferred Securities and the Depositor is unable to locate a qualified successor depository, (ii) the Depositor executes and delivers to the Administrative Trustees and Property Trustee a written order stating that it elects to terminate the book-entry system through the Depository or (iii) there shall have occurred and be continuing a Debenture Event of Default.

(c) If a Preferred Security is to be exchanged in whole or in part for a beneficial interest in a Global Preferred Security, then either (i) such Global Preferred Security shall be so surrendered for exchange or cancellation as provided in this Article V or (ii) the Liquidation Amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or cancelled, or equal to the Liquidation Amount of such other Preferred Securities to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Property Trustee, in accordance with the rules and procedures of the Depository for such Global Preferred Security (the "Applicable Procedures"), shall instruct the Clearing Agency or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Preferred Security by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees shall execute and the Property Trustee shall, subject to Section 504(b) and as otherwise provided in this Article V, authenticate and deliver any Preferred Securities issuable in exchange for such Global Preferred Security (or any portion thereof) in accordance with the instructions of the Clearing Agency. The Property Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Preferred Security executed, authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Preferred Security or any portion thereof, whether pursuant to this Article V or otherwise, shall be executed, authenticated and delivered in the form of, and shall be, a Global Preferred Security, unless such Global Preferred Security is registered in the name of a Person other than the Clearing Agency for such Global Preferred Security or a nominee thereof.

(e) The Clearing Agency or its nominee, as the registered owner of a Global Preferred Security, shall be considered the Holder of the Preferred Securities represented by such Global Preferred Security for all purposes under this Trust Agreement and the Preferred Securities, and owners of beneficial interests in such Global Preferred Security shall hold such interests pursuant to the Applicable Procedures and, except as otherwise provided herein, shall not be entitled to receive physical delivery of any such Preferred Securities in definitive form and shall not be considered the Holders thereof under this Trust Agreement. Accordingly, any such owner's beneficial interest in the Global Preferred Securities shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Clearing Agency or its nominee. Neither the Property Trustee, the Securities Registrar nor the Depositor shall have any liability in respect of any transfers effected by the Clearing Agency.

(f) The rights of owners of beneficial interests in a Global Preferred Security shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such owners and the Clearing Agency.

Section 504. Registration of Transfer and Exchange of the Preferred Securities Certificates. (a) The Depositor shall keep or cause to be kept, at the office or agency maintained pursuant to Section 508, a register or registers for the purpose of registering the Trust Securities Certificates and, subject to the provisions of Section 503A, transfers and exchanges of the Preferred Securities Certificates (herein referred to as the "Securities Register") in which the registrar designated by the Depositor (the "Securities Registrar"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of the Preferred Securities Certificates and the Common Securities Certificates (subject to Section 510 in the case of the Common Securities Certificates) and registration of transfers and exchanges of the Preferred Securities Certificates as herein provided. The Property Trustee shall be the initial Securities Registrar.

(b) Subject to the provisions of Section 503A, only upon surrender for registration of transfer of any Preferred Securities Certificate at the office or agency maintained pursuant to Section 508 shall the Administrative Trustees or any one of them execute and deliver, in the name of the designated transferee or transferees, one or more new Preferred Securities Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by the manual or facsimile signature of such Administrative Trustee or Trustees. The Securities Registrar shall not be required to register the transfer of any of the Preferred Securities that have been called for redemption. At the option of a Holder, the Preferred Securities Certificates may be exchanged for other Preferred Securities Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of



the Preferred Securities Certificates to be exchanged at the office or agency maintained pursuant to Section 508.

(c) Every Preferred Securities Certificate presented or surrendered for registration of transfer or exchange, subject to the provisions of Section 503A, shall be accompanied by a written instrument of transfer in form satisfactory to the Property Trustee and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each Preferred Securities Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by the Property Trustee in accordance with its customary practice. The Trust shall not be required to (i) issue, register the transfer of, or exchange any of the Preferred Securities during a period beginning at the opening of business 15 calendar days before the date of mailing of a notice of redemption of any of the Preferred Securities called for redemption and ending at the close of business on the day of such mailing; or (ii) register the transfer of or exchange any of the Preferred Securities so selected for redemption, in whole or in part, except the unredeemed portion of any such Preferred Securities being redeemed in part.

(d) No service charge shall be made for any registration of transfer or exchange of Preferred Securities Certificates, subject to the provisions of Section 503A, but the Securities Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of the Preferred Securities Certificates.

(e) Preferred Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Trust Agreement. Any transfer or purported transfer of any Preferred Security not made in accordance with this Trust Agreement shall be null and void. A Preferred Security that is not a Global Preferred Security may be transferred, in whole or in part, to a Person who takes delivery in the form of another Preferred Security that is not a Global Preferred Security as provided in Section 504(a). A beneficial interest in a Global Preferred Security may be exchanged for a Preferred Security that is not a Global Preferred Security only as provided in Section 503A.

Section 505. Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates. If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate; and (b) there shall be delivered to the Securities Registrar, the Property Trustee and the Administrative Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a bona fide purchaser, the Administrative Trustees, or any one of them, on behalf of the Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section 505, the Administrative Trustees or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Securities Certificate issued pursuant to this Section 505 shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Trust, as if originally

issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

Section 506. Persons Deemed the Securityholders. The Trustees, the Paying Agent and the Securities Registrar shall treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and neither the Trustees nor the Securities Registrar shall be bound by any notice to the contrary.

Section 507. Access to List of the Securityholders' Names and Addresses. At any time when the Property Trustee is not also acting as the Securities Registrar, the Administrative Trustees or the Depositor shall furnish or cause to be furnished to the Property Trustee (a) within five Business Days of March 15, June 15, September 15 and December 15 in each year, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Securityholders as of the most recent record date; and (b) promptly after receipt by any Administrative Trustee or the Depositor of a request therefor from the Property Trustee in order to enable the Property Trustee to discharge its obligations under this Trust Agreement, in each case to the extent such information is in the possession or control of the Administrative Trustees or the Depositor and is not identical to a previously supplied list or has not otherwise been received by the Property Trustee in its capacity as Securities Registrar. The rights of the Securityholders to communicate with other Securityholders with respect to their rights under this Trust Agreement or under the Trust Securities, and the corresponding rights of the Trustee shall be as provided in the Trust Indenture Act. Each Holder, by receiving and holding a Trust Securities Certificate, and each owner shall be deemed to have agreed not to hold the Depositor, the Property Trustee or the Administrative Trustees accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

Section 508. Maintenance of Office or Agency. The Administrative Trustees shall maintain in a location or locations designated by the Administrative Trustees, an office or offices or agency or agencies where the Preferred Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Trust Securities Certificates may be served. The Administrative Trustees initially designate the Corporate Trust Office of the Property Trustee, Wilmington Trust Company, as the principal corporate trust office for such purposes. The Administrative Trustees shall give prompt written notice to the Depositor and to the Securityholders of any change in the location of the Securities Register or any such office or agency.

Section 509. Appointment of the Paying Agent. The Paying Agent shall initially be the Property Trustee, and any co-paying agent chosen by the Property Trustee must be acceptable to the Administrative Trustees and the Depositor. The Paying Agent shall make Distributions to the Securityholders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Administrative Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account for the purpose of making the Distributions referred to above. The Administrative Trustees may revoke such power and remove the Paying Agent if such Trustees determine in their sole discretion that the Paying Agent shall have failed to perform its obligations under this Trust Agreement in any

material respect. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Administrative Trustees, the Property Trustee and the Depositor. In the event that the Property Trustee shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Administrative Trustees shall appoint a successor (which shall be a bank or trust company) that is acceptable to the Property Trustee and the Depositor to act as the Paying Agent. The Administrative Trustees shall cause such successor Paying Agent or any additional Paying Agent appointed by the Administrative Trustees to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent shall hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the Securityholders entitled thereto until such sums shall be paid to such Securityholders. The Paying Agent shall return all unclaimed funds to the Property Trustee and, upon removal of a Paying Agent, such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 801, 803 and 806 shall apply to the Property Trustee also in its role as the Paying Agent, for so long as the Property Trustee shall act as Paying Agent and, to the extent applicable, to any other Paying Agent appointed hereunder. Any reference in this Trust Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

Section 510. Ownership of the Common Securities by the Depositor. On the Closing Date, the Depositor shall acquire and retain beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, any attempted transfer of the Common Securities (other than a transfer in connection with a merger or consolidation of the Depositor into another corporation pursuant to Section 12.1 of the Indenture) shall be void. The Administrative Trustees shall cause each Common Securities Certificate issued to the Depositor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE."

Section 511. The Trust Securities Certificates. (a) The Preferred Securities Certificates shall be issued in the form of one or more fully registered Global Preferred Securities Certificates which will be deposited with or on behalf of the Clearing Agency and registered in the name of the Clearing Agency's nominee. Unless and until it is exchangeable in whole or in part for the Preferred Securities in definitive form, a global security may not be transferred except as a whole by the Clearing Agency to a nominee of the Clearing Agency or by a nominee of the Clearing Agency to the Clearing Agency or another nominee of the Clearing Agency or by the Clearing Agency or any such nominee to a successor of such Clearing Agency or a nominee of such successor.

(b) A single Common Securities Certificate representing the Common Securities shall be issued to the Depositor in the form of a definitive Common Securities Certificate.

Section 512. [Reserved].

Section 513. Notices. To the extent that a notice or other communication to the Holders is required under this Trust Agreement, for so long as Preferred Securities are represented by a Global Preferred Securities Certificate, the Trustees shall give all such notices and

communications specified herein to be given to the Clearing Agency, and shall have no obligation to provide notice to the owners of the beneficial interest in the Global Preferred Securities.

Section 514. Rights of the Securityholders. (a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 209, and the Securityholders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Trust Securities shall have no preemptive or similar rights. When issued and delivered to Holders of the Preferred Securities against payment of the purchase price therefor, the Preferred Securities shall be fully paid and nonassessable interests in the Trust. The Holders of the Preferred Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

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

(c) For so long as any of the Preferred Securities remain Outstanding, upon a Debenture Event of Default arising from the failure to pay interest or principal on the Debentures, the Holders of any of the Preferred Securities then Outstanding shall, to the fullest extent permitted by law, have the right to directly institute proceedings for enforcement of payment to such Holders of principal of or interest on the Debentures having a principal amount equal to the Liquidation Amount of the Preferred Securities of such Holders.

#### ARTICLE VI

##### ACTS OF THE SECURITYHOLDERS; MEETINGS; VOTING

Section 601. Limitations on Voting Rights. (a) Except as provided in this Section 601, in Sections 514, 810 and 1002 and in the Indenture and as otherwise set forth in the Guarantee or required by law, no Holder of Preferred Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto; nor shall anything herein set forth, or contained in the terms of the Trust

Securities Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.

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

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

Section 602. Notice of Meetings. Notice of all meetings of the Preferred Securityholders, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 1008 to each Preferred Securityholder of record, at his or her registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

Section 603. Meetings of the Preferred Securityholders. (a) No annual meeting of the Securityholders is required to be held. The Administrative Trustees, however, shall call a

meeting of the Securityholders to vote on any matter in respect of which the Preferred Securityholders are entitled to vote upon the written request of the Preferred Securityholders of 25% of the Outstanding Preferred Securities (based upon their aggregate Liquidation Amount) and the Administrative Trustees or the Property Trustee may, at any time in their discretion, call a meeting of the Preferred Securityholders to vote on any matters as to which the Preferred Securityholders are entitled to vote.

(b) The Preferred Securityholders of record of 50% of the Outstanding Preferred Securities (based upon their aggregate Liquidation Amount), present in person or by proxy, shall constitute a quorum at any meeting of the Securityholders.

(c) If a quorum is present at a meeting, an affirmative vote by the Preferred Securityholders of record present, in person or by proxy, holding more than a majority of the Preferred Securities (based upon their aggregate Liquidation Amount) held by the Preferred Securityholders of record present, either in person or by proxy, at such meeting shall constitute the action of the Securityholders, unless this Trust Agreement requires a greater number of affirmative votes.

Section 604. Voting Rights. The Securityholders shall be entitled to one vote for each dollar value of Liquidation Amount represented by their Trust Securities (with any fractional multiple thereof rounded up or down as the case may be to the closest integral multiple) in respect of any matter as to which such Securityholders are entitled to vote (and such dollar value shall be \$10 per Preferred Security until such time, if any, as the Liquidation Amount is changed as provided herein).

Section 605. Proxies, Etc. At any meeting of the Securityholders, any Securityholder entitled to vote thereat may vote by proxy, provided that no proxy, shall be voted at any meeting unless it shall have been placed on file with the Administrative Trustees, or with such other officer or agent of the Trust as the Administrative Trustees may direct, for verification prior to the time at which such vote shall be taken. Only Holders shall be entitled to vote. When Trust Securities are held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and, the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

Section 606. Securityholder Action by Written Consent. Any action which may be taken by the Securityholders at a meeting may be taken without a meeting if the Securityholders holding more than a majority of all of the Outstanding Trust Securities (based upon their aggregate Liquidation Amount) entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any express provision of this Trust Agreement) shall consent to the action in writing.

Section 607. Record Date for Voting and Other Purposes. For the purposes of determining the Securityholders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any Distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Trust Agreement, or for the purpose of any other action, the Administrative Trustees or the Property Trustee may from time to time fix a date, not more than 90 days prior to the date of any meeting of the Securityholders or the payment of Distribution or other action, as the case may be, as a record date for the determination of the identity of the Securityholders of record for such purposes.

Section 608. Acts of the Securityholders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Trust Agreement to be given, made or taken by the Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to an Administrative Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Trust Agreement and (subject to Section 801) conclusive in favor of the Trustees, if made in the manner provided in this Section 608.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a signer acting in a capacity other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which any Trustee receiving the same deems sufficient.

(c) The ownership of the Preferred Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Securityholder of any Trust Security shall bind every future Securityholder of the same Trust Security and the Securityholder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

(e) Without limiting the foregoing, a Securityholder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents

each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

(f) A Securityholder may institute a legal proceeding directly against the Depositor under the Guarantee to enforce its rights under the Guarantee without first instituting a legal proceeding against the Guarantee Trustee (as defined in the Guarantee), the Trust or any Person.

Section 609. Inspection of Records. Upon reasonable notice to the Administrative Trustees and the Property Trustee, the records of the Trust shall be open to inspection at the principal executive office of the Trustee (as indicated in Section 202) to Holders of the Trustee Securities during normal business hours for any purpose reasonably related to such Securityholder's interest as a Securityholder.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES

Section 701. Representations and Warranties of the Bank and the Property Trustee. The Bank and the Property Trustee, each severally on behalf of and as to itself, as of the date hereof, and each successor Property Trustee at the time of the successor Property Trustee's acceptance of its appointment as Property Trustee hereunder (in the case of a successor Property Trustee, the term "Bank" as used herein shall be deemed to refer to such successor Property Trustee in its separate corporate capacity) hereby represents and warrants (as applicable) for the benefit of the Depositor and the Securityholders that:

(a) the Bank is a Delaware banking corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation;

(b) the Bank has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;

(c) this Trust Agreement has been duly authorized, executed and delivered by the Property Trustee and constitutes the valid and legally binding agreement of the Property Trustee enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(d) the execution, delivery and performance by the Property Trustee of this Trust Agreement has been duly authorized by all necessary corporate or other action on the part of the Property Trustee and does not require any approval of stockholders of the Bank and such execution, delivery and performance shall not (i) violate the Bank's charter or by-laws; (ii) violate any provision of, or constitute, with or without notice or



lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Property Trustee or the Bank is a party or by which it is bound; or (iii) violate any law, governmental rule or regulation of the United States or its jurisdiction of incorporation, as the case may be, governing the banking or trust powers of the Bank or the Property Trustee (as appropriate in context) or any order, judgment or decree applicable to the Property Trustee or the Bank;

(e) neither the authorization, execution or delivery by the Property Trustee of this Trust Agreement nor the consummation of any of the transactions by the Property Trustee contemplated herein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing federal law governing the banking or trust powers of the Bank or the Property Trustee, as the case may be, under the laws of the United States or its jurisdiction of incorporation;

(f) there are no proceedings pending or, to the best of the Property Trustee's knowledge, threatened against or affecting the Bank or the Property Trustee in any court or before any governmental authority, agency or arbitration board or tribunal which, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Property Trustee to enter into or perform its obligations as one of the Trustees under this Trust Agreement; and

(g) the Property Trustee is a Person eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000.

Section 702. Representations and Warranties of the Delaware Bank and the Delaware Trustee. The Delaware Bank and the Delaware Trustee, each severally on behalf of and as to itself, as of the date hereof, and each successor Delaware Trustee at the time of the successor Delaware Trustee's acceptance of appointment as Delaware Trustee hereunder (the term "Delaware Bank" being used to refer to such successor Delaware Trustee in its separate corporate capacity), hereby represents and warrants (as applicable) for the benefit of the Depositor and the Securityholders that:

(a) the Delaware Bank is a Delaware banking corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) the Delaware Bank has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Trust Agreement and has taken all necessary action to authorize the execution, delivery and performance by it of this Trust Agreement;

(c) this Trust Agreement has been duly authorized, executed and delivered by the Delaware Trustee and constitutes the valid and legally binding agreement of the Delaware Trustee enforceable against it in accordance with its terms, subject to

bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors, rights and to general equity principles;

(d) the execution, delivery and performance by the Delaware Trustee of this Trust Agreement has been duly authorized by all necessary corporate or other action on the part of the Delaware Trustee and does not require any approval of stockholders of the Delaware Bank and such execution, delivery and performance shall not (i) violate the Delaware Bank's charter or by-laws; (ii) violate any provision of, or constitute, with or without notice or lapse of time, a default under, or result in the creation or imposition of, any Lien on any properties included in the Trust Property pursuant to the provisions of, any indenture, mortgage, credit agreement, license or other agreement or instrument to which the Delaware Bank or the Delaware Trustee is a party or by which it is bound; or (iii) violate any law, governmental rule or regulation of the United States or the State of Delaware, as the case may be, governing the banking or trust powers of the Delaware Bank or the Delaware Trustee (as appropriate in context) or any order, judgment or decree applicable to the Delaware Bank or the Delaware Trustee;

(e) neither the authorization, execution or delivery by the Delaware Trustee of this Trust Agreement nor the consummation of any of the transactions by the Delaware Trustee contemplated herein or therein requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing federal law governing the banking or trust powers of the Delaware Bank or the Delaware Trustee, as the case may be, under the laws of the United States or the State of Delaware; and

(f) there are no proceedings pending or, to the best of the Delaware Trustee's knowledge, threatened against or affecting the Delaware Bank or the Delaware Trustee in any court or before any governmental authority, agency or arbitration board or tribunal which, individually or in the aggregate, would materially and adversely affect the Trust or would question the right, power and authority of the Delaware Trustee to enter into or perform its obligations as one of the Trustees under this Trust Agreement.

Section 703. Representations and Warranties of the Depositor. The Depositor hereby represents and warrants for the benefit of the Securityholders that:

(a) the Trust Securities Certificates issued on the Closing Date or the Option Closing Date, if applicable, on behalf of the Trust have been duly authorized and, shall have been duly and validly executed, issued and delivered by the Administrative Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Trust Agreement and the Securityholders shall be, as of such date, entitled to the benefits of this Trust Agreement; and

(b) there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and

performance by the Bank, the Property Trustee or the Delaware Trustee, as the case may be, of this Trust Agreement.

## ARTICLE VIII

### TRUSTEES

Section 801. Certain Duties and Responsibilities. (a) The duties and responsibilities of the Trustees shall be as provided by this Trust Agreement and, in the case of the Property Trustee, by the Trust Indenture Act. Notwithstanding the foregoing, no provision of this Trust Agreement shall require the Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. No Administrative Trustee nor the Delaware Trustee shall be liable for its act or omissions hereunder except as a result of its own gross negligence or willful misconduct. The Property Trustee's liability shall be determined under the Trust Indenture Act. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section 801. To the extent that, at law or in equity, the Delaware Trustee or an Administrative Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Securityholders, the Delaware Trustee or such Administrative Trustee shall not be liable to the Trust or to any Securityholder for such Trustee's good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of the Delaware Trustee or the Administrative Trustees otherwise existing at law or in equity, are agreed by the Depositor and the Securityholders to replace such other duties and liabilities of the Delaware Trustee and the Administrative Trustees, as the case may be.

(b) All payments made by the Property Trustee or a Paying Agent in respect of the Trust Securities shall be made only from the revenue and proceeds from the Trust Property and only to the extent that there shall be sufficient revenue or proceeds from the Trust Property to enable the Property Trustee or a Paying Agent to make payments in accordance with the terms hereof. Each Securityholder, by its acceptance of a Trust Security, agrees that it shall look solely to the revenue and proceeds from the Trust Property to the extent legally available for distribution to it as herein provided and that the Trustees are not personally liable to it for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 801(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.

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

(i) the Property Trustee shall not be liable for any error of judgment made in good faith by an authorized officer of the Property Trustee, unless it shall be proved that the Property Trustee was negligent in ascertaining the pertinent facts;

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

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

(iv) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Depositor and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 301 and except to the extent otherwise required by law; and

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

Section 802. Certain Notices. (a) Within five (5) Business Days after the occurrence of any Event of Default actually known to the Property Trustee, the Property Trustee shall transmit, in the manner and to the extent provided in Section 1008, notice of such Event of Default to the Securityholders, the Administrative Trustees and the Depositor, unless such Event of Default shall have been cured or waived. For purposes of this Section 802, the term "Event of Default" means any event that is, or after notice or lapse of time or both would become, an Event of Default.

(b) The Administrative Trustees shall transmit to the Securityholders in the manner and to the extent provided in Section 1008 notice of the Depositor's election to begin or further extend an Extended Interest Period on the Debentures (unless such election shall have been revoked), and of any election by the Depositor to accelerate the Maturity Date of the Debentures within the time specified for transmitting such notice to the holders of the Debentures pursuant to the Indenture as originally executed.

Section 803. Certain Rights of the Property Trustee. Subject to the provisions of Section 801:

(a) the Property Trustee may rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

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

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

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

(e) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or, except as provided in Section 405, any filing under tax or securities laws or any filing under tax or securities laws) or any re-recording, refiling or reregistration thereof;

(f) the Property Trustee may consult with counsel of its choice (which counsel may be counsel to the Depositor or any of its Affiliates) and the advice of such

counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and, in accordance with such advice, such counsel may be counsel to the Depositor or any of its Affiliates, and may include any of its employees; the Property Trustee shall have the right at any time to seek instructions concerning the administration of this Trust Agreement from any court of competent jurisdiction;

(g) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request, order or direction of any of the Securityholders, pursuant to this Trust Agreement, unless such Securityholders shall have offered to the Property Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request, order or direction; nothing contained herein shall, however, relieve the Property Trustee of the obligation, upon the occurrence of an Event of Default (that has not been cured or waived) to exercise such of the rights and powers vested in it by this Trust Agreement, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs;

(h) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, unless requested in writing to do so by the Holders of not less than a majority in Liquidation Amount of the Securities, but the Property Trustee may make such further inquiry or investigation into such facts or matters as it may see fit;

(i) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, provided that the Property Trustee shall be responsible for its own negligence or recklessness with respect to selection of any agent or attorney appointed by it hereunder;

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

(k) except as otherwise expressly provided by this Trust Agreement, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Trust Agreement. No provision of this Trust Agreement shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in

any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

Section 804. Not Responsible for Recitals or Issuance of Securities. The Recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Depositor of the proceeds of the Debentures.

Section 805. May Hold Securities. Any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of the Trust Securities and, subject to Sections 808 and 813 and except as provided in the definition of the term "Outstanding" in Article I, may otherwise deal with the Trust with the same rights it would have if it were not a Trustee or such other agent.

Section 806. Compensation; Indemnity; Fees. The Depositor agrees:

(a) to pay to the Trustees from time to time reasonable compensation for all services rendered by them hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust, in the case of the Property Trustee as set forth in a written agreement between the Depositor and the Property Trustee);

(b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to such Trustee's negligence, bad faith or willful misconduct (or, in the case of the Administrative Trustees or the Delaware Trustee, any such expense, disbursement or advance as may be attributable to its, his or her gross negligence, bad faith or willful misconduct); and

(c) to indemnify each of the Trustees or any predecessor Trustee for, and to hold the Trustees harmless against, any loss, damage, claims, liability, penalty or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Trust Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder, except any such expense, disbursement or advance as may be attributable to such Trustee's negligence, bad faith or willful misconduct (or, in the case of the Administrative Trustees or the Delaware Trustee, any such expense, disbursement or advance as may be attributable to its, his or her gross negligence, bad faith or willful misconduct).

No Trustee may claim any Lien or charge on any Trust Property as a result of any amount due pursuant to this Section 806.

Section 807. Corporate Property Trustee Required; Eligibility of Trustees. (a) There shall at all times be a Property Trustee hereunder with respect to the Trust Securities. The Property Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 807, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section 807, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VIII. The Property Trustee and the Delaware Trustee may, but need not be, the same person.

(b) There shall at all times be one or more Administrative Trustees hereunder with respect to the Trust Securities. Each Administrative Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind that entity.

(c) There shall at all times be a Delaware Trustee with respect to the Trust Securities. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware; or (ii) a legal entity with its principal place of business in the State of Delaware and that otherwise meets the requirements of applicable Delaware law that shall act through one or more persons authorized to bind such entity.

Section 808. Conflicting Interests. If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Trust Agreement.

Section 809. Co-Trustees and Separate Trustee. (a) Unless a Debenture Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Depositor shall have power to appoint, and upon the written request of the Property Trustee, the Depositor shall for such purpose join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Property Trustee either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 809. If the Depositor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case a Debenture Event of Default has occurred and is continuing, the Property Trustee alone shall



have power to make such appointment. Any co-trustee or separate trustee appointed pursuant to this Section 809 shall either be (i) a natural person who is at least 21 years of age and a resident of the United States; or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity.

(b) Should any written instrument from the Depositor be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right, or power, any and all such instruments shall, on request, be executed, acknowledged, and delivered by the Depositor.

(c) Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(i) The Trust Securities shall be executed and delivered and all rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustees specified hereunder, shall be exercised, solely by such Trustees and not by such co-trustee or separate trustee.

(ii) The rights, powers, duties and obligations hereby conferred or imposed upon the Property Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Property Trustee or by the Property Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Property Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

(iii) The Property Trustee at any time, by an instrument in writing executed by it, with the written concurrence of the Depositor, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 809, and, in case a Debenture Event of Default has occurred and is continuing, the Property Trustee shall have the power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Depositor. Upon the written request of the Property Trustee, the Depositor shall join with the Property Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 809.

(iv) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee or any other trustee hereunder.

(v) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.

(vi) Any Act of the Holders delivered to the Property Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 810. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of any Trustee (the "Relevant Trustee") and no appointment of a successor Trustee pursuant to this Article VIII shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 811.

(b) Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time with respect to the Trust Securities by giving written notice thereof to the Securityholders. If the instrument of acceptance by the successor Trustee required by Section 811 shall not have been delivered to the Relevant Trustee within 30 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Depositor, any court of competent jurisdiction for the appointment of a successor Relevant Trustee with respect to the Trust Securities.

(c) Unless a Debenture Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by an Act of the Common Securityholder. If a Debenture Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at such time by an Act of the Holders of a majority in Liquidation Amount of the Preferred Securities, delivered to the Relevant Trustee (in its individual capacity and on behalf of the Trust). An Administrative Trustee may be removed by the Common Securityholder at any time.

(d) If any Trustee shall resign, be removed or become incapable of acting as Trustee, or if a vacancy shall occur in the office of any Trustee for any cause, at a time when no Debenture Event of Default shall have occurred and be continuing, the Common Securityholder, by an Act of the Common Securityholder delivered to the retiring Trustee, shall promptly appoint a successor Trustee or Trustees with respect to the Trust Securities and the Trust, and the successor Trustee shall comply with the applicable requirements of Section 811. If the Property Trustee or the Delaware Trustee shall resign, be removed or become incapable of continuing to act as the Property Trustee or the Delaware Trustee, as the case may be, at a time when a Debenture Event of Default shall have occurred and is continuing, the Preferred Securityholders, by an Act of the Securityholders of a majority in Liquidation Amount of the Preferred Securities then Outstanding delivered to the retiring Relevant Trustee, shall promptly appoint a successor Relevant Trustee or Trustees with respect to the Trust Securities and the Trust, and such successor Trustee shall comply with the applicable requirements of Section 811. If an Administrative Trustee shall resign, be removed or become incapable of acting as an Administrative Trustee, at a time when a Debenture Event of Default shall have occurred and be continuing, the Common Securityholder, by an Act of the Common Securityholder delivered to an Administrative Trustee, shall promptly appoint a successor Administrative Trustee or Administrative Trustees with respect to the Trust Securities and the Trust, and such successor Administrative Trustee or Administrative Trustees shall comply with the applicable requirements of Section 811. If no successor Relevant Trustee with respect to the Trust Securities shall have been so appointed by the Common Securityholder or the Preferred Securityholders and accepted appointment in the manner required by Section 811, any

Securityholder who has been a Securityholder of Trust Securities for six consecutive months on behalf of himself or herself and all others similarly situated may petition a court of competent jurisdiction for the appointment of a successor Relevant Trustee with respect to the Trust Securities.

(e) The Property Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all the Securityholders in the manner provided in Section 1008 and shall give notice to the Depositor. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Property Trustee.

(f) Notwithstanding the foregoing or any other provision of this Trust Agreement, in the event any Administrative Trustee or a Delaware Trustee who is a natural person dies or becomes, in the opinion of the Depositor, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by (a) the unanimous act of the remaining Administrative Trustees if there are at least two of them; or (b) otherwise by the Depositor (with the successor in each case being a Person who satisfies the eligibility requirement for Administrative Trustees set forth in Section 807).

Section 811. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Relevant Trustee with respect to the Trust Securities and the Trust, the retiring Relevant Trustee and each successor Relevant Trustee with respect to the Trust Securities shall execute and deliver an instrument hereto wherein each successor Relevant Trustee shall accept such appointment and which shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust and upon the execution and delivery of such instrument the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Trust Securities and the Trust; but, on request of the Trust or any successor Relevant Trustee such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all the Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Trust Securities and the Trust.

(b) Upon request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the immediately preceding paragraph, as the case may be.

(c) No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article VIII.

Section 812. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Property Trustee, the Delaware Trustee or any Administrative Trustee may be

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

Section 813. Preferential Collection of Claims Against the Depositor or the Trust. If and when the Property Trustee or the Delaware Trustee shall be or become a creditor of the Depositor or the Trust (or any other obligor upon the Debentures or the Trust Securities), the Property Trustee or the Delaware Trustee, as the case may be, shall be subject to and shall take all actions necessary in order to comply with the provisions of the Trust Indenture Act regarding the collection of claims against the Depositor or the Trust (or any such other obligor).

Section 814. Reports by the Property Trustee. (a) The Property Trustee shall transmit to the Securityholders such reports concerning the Property Trustee, its actions under this Trust Agreement and the property and funds in its possession in its capacity as the Property Trustee as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

(b) A copy of each such report shall, at the time of such transmission to the Holders, be filed by the Property Trustee with the Nasdaq National Market and each national securities exchange or other organization upon which the Trust Securities are listed, and also with the Commission and the Depositor.

Section 815. Reports to the Property Trustee. The Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

Section 816. Evidence of Compliance with Conditions Precedent. Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) of the Trust Indenture Act shall be given in the form of an Officers' Certificate.

Section 817. Number of Trustees. (a) The number of Trustees shall be five, provided that the Holder of all of the Common Securities by written instrument may increase or decrease the number of the Administrative Trustees. The Property Trustee and the Delaware Trustee may be the same Person.

(b) If a Trustee ceases to hold office for any reason and the number of the Administrative Trustees is not reduced pursuant to Section 817(a), or if the number of the

Trustees is increased pursuant to Section 817(a), a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 810.

(c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of the Administrative Trustees shall occur, until such vacancy is filled by the appointment of an Administrative Trustee in accordance with Section 810, the Administrative Trustees in office, regardless of their number (and notwithstanding any other provision of this Agreement), shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Trust Agreement.

Section 818. Delegation of Power. (a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 207(a); and

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

Section 819. Voting. Except as otherwise provided in this Trust Agreement, the consent or approval of the Administrative Trustees shall require consent or approval by not less than a majority of the Administrative Trustees, unless there are only two, in which case both must consent.

## ARTICLE IX

### TERMINATION, LIQUIDATION AND MERGER

Section 901. Termination upon Expiration Date. Unless earlier dissolved, the Trust shall automatically dissolve on June 30, 2032 (the "Expiration Date") subject to distribution of the Trust Property in accordance with Section 904.

Section 902. Early Termination. The first to occur of any of the following events is an "Early Termination Event":

(a) the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Depositor;

(b) delivery of written direction to the Property Trustee by the Depositor at any time (which direction is wholly optional and within the discretion of the Depositor, subject to Depositor having received prior approval of the Board of Governors of the

Federal Reserve System if so required under applicable guidelines, policies or regulations thereof) to dissolve the Trust and distribute the Debentures to the Securityholders in exchange for the Preferred Securities in accordance with Section 904;

(c) the redemption of all of the Preferred Securities in connection with the redemption of all of the Debentures (whether upon a Debenture Redemption Date or the maturity of the Debenture); and

(d) the entrance of an order for dissolution of the Trust by a court of competent jurisdiction.

Section 903. Termination. The respective obligations and responsibilities of the Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to the Securityholders upon the liquidation of the Trust pursuant to Section 904, or upon the redemption of all of the Trust Securities pursuant to Section 402, of all amounts required to be distributed hereunder upon the final payment of the Trust Securities; (b) the payment of any expenses owed by the Trust; (c) the discharge of all administrative duties of the Administrative Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders; and (d) the filing of a Certificate of Cancellation by the Administrative Trustee under the Delaware Business Trust Act.

Section 904. Liquidation. (a) If an Early Termination Event specified in clause (a), (b), or (d) of Section 902 occurs or upon the Expiration Date, the Trust shall be liquidated by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Securityholder a Like Amount of Debentures, subject to Section 904(d). Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not later than 30 nor more than 60 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All notices of liquidation shall:

(i) state the Liquidation Date;

(ii) state that from and after the Liquidation Date, the Trust Securities shall no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange shall be deemed to represent a Like Amount of Debentures; and

(iii) provide such information with respect to the mechanics by which the Holders may exchange the Trust Securities Certificates for the Debentures, or, if Section 904(d) applies, receive a Liquidation Distribution, as the Administrative Trustees or the Property Trustee shall deem appropriate.

(b) Except where Section 902(c) or 904(d) applies, in order to effect the liquidation of the Trust and distribution of the Debentures to the Securityholders, the Property Trustee shall establish a record date for such distribution (which shall be not more than 45 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a

separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Debentures in exchange for the Outstanding Trust Securities Certificates.

(c) Except where Section 902(c) or 904(d) applies, after the Liquidation Date, (i) the Trust Securities shall no longer be deemed to be Outstanding; (ii) certificates representing a Like Amount of the Debentures shall be issued to the Holders of Trust Securities Certificates upon surrender of such certificates to the Administrative Trustees or their agent for exchange; (iii) the Depositor shall use its best efforts to have the Debentures listed on the Nasdaq National Market, or on such other securities exchange or other organization as the Preferred Securities are then listed or traded; (iv) any Trust Securities Certificates not so surrendered for exchange shall be deemed to represent a Like Amount of Debentures, accruing interest at the rate provided for in the Debentures from the last Distribution Date on which a Distribution was made on such Trust Securities Certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal shall be made to Holders of the Trust Securities Certificates with respect to such Debentures); and (v) all rights of the Securityholders holding the Trust Securities shall cease, except the right of such Securityholders to receive the Debentures upon surrender of the Trust Securities Certificates.

(d) In the event that, notwithstanding the other provisions of this Section 904, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Debentures in the manner provided herein is determined by the Property Trustee not to be practical, the Trust Property shall be liquidated, and the Trust shall be dissolved, wound-up or terminated, by the Property Trustee in such manner as the Property Trustee determines. In such event, on the date of the dissolution, winding-up or other termination of the Trust, the Securityholders shall be entitled to receive out of the assets of the Trust available for distribution to the Securityholders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If, upon any such dissolution, winding-up or termination, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a pro rata basis (based upon Liquidation Amounts, subject to Section 407). The Holder of the Common Securities shall be entitled to receive the Liquidation Distributions upon any such dissolution, winding-up or termination pro rata (determined as aforesaid) with the Holders of the Preferred Securities, except that, if a Debenture Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities.

Section 905. Mergers, Consolidations, Amalgamations or Replacements of the Trust. The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other Person, except pursuant to this Section 905. At the request of the Depositor, with the consent of the Administrative Trustees and without the consent of the Holders of the Preferred Securities, the Property Trustee or the Delaware Trustee, the Trust may merge with or into, consolidate, amalgamate, be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any State; provided, that (a) such

successor entity either (i) expressly assumes all of the obligations of the Trust with respect to the Preferred Securities; or (ii) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Preferred Securities rank in priority with respect to distributions and payments upon liquidation, redemption and otherwise; (b) the Depositor expressly appoints a trustee of such successor entity possessing substantially the same powers and duties as the Property Trustee as the holder of the Debentures; (c) the Successor Securities are listed or traded, or any Successor Securities shall be listed or traded upon notification of issuance, on any national securities exchange or other organization on which the Preferred Securities are then listed, if any; (d) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Preferred Securities (including any Successor Securities) in any material respect; (e) such successor entity has a purpose substantially identical to that of the Trust; (f) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Depositor has received an Opinion of Counsel to the effect that (i) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Preferred Securities (including any Successor Securities) in any material respect; and (ii) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor such successor entity shall be required to register as an "investment company" under the Investment Company Act; and (g) the Depositor owns all of the Common Securities of such successor entity and guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee, the Debentures, this Trust Agreement and the Expense Agreement. For purposes of this Section 905, any such consolidation, merger, sale, conveyance, transfer or other disposition as a result of which (a) the Company is not the surviving Person, and (b) the same Person is not both (i) the primary obligor in respect of the Debentures and (ii) the Guarantor under that certain Preferred Securities Guarantee Agreement of even date herewith (the "Guarantee") between the Company and Wilmington Trust Company, shall be deemed to constitute a replacement of the Trust by a successor entity; provided further that, notwithstanding the foregoing, in the event that upon the consummation of such a consolidation, merger, sale, conveyance, transfer or other disposition, the parent company (if any) of the Company, or its successor, is a bank holding company or financial holding company or comparably regulated financial institution, such parent company shall guarantee the obligations of the Trust (and any successor thereto) under the Preferred Securities (including any Successor Securities) at least to the extent provided by the Guarantee, the Debentures, the Trust Agreement and the Expense Agreement. Notwithstanding the foregoing, the Trust shall not, except with the consent of the Holders of 100% in Liquidation Amount of the Preferred Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other Person or permit any other Person to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger or replacement would cause the Trust or the successor entity to be classified as other than a grantor trust for United States federal income tax purposes.



## ARTICLE X

## MISCELLANEOUS PROVISIONS

Section 1001. Limitation of Rights of the Securityholders. The death or incapacity of any Person having an interest, beneficial or otherwise, in the Trust Securities shall not operate to terminate this Trust Agreement, nor entitle the legal representatives or heirs of such Person or any Securityholder for such Person to claim an accounting, take any action or bring any proceeding in any court for a partition or winding-up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 1002. Amendment. (a) This Trust Agreement may be amended from time to time by the Trustees and the Depositor, without the consent of any Securityholders, (i) as provided in Section 811 with respect to acceptance of appointment by a successor Trustee; (ii) to cure any ambiguity, correct or supplement any provision herein or therein which may be inconsistent with any other provision herein or therein, or to make any other provisions with respect to matters or questions arising under this Trust Agreement, that shall not be inconsistent with the other provisions of this Trust Agreement; (iii) to modify, eliminate or add to any provisions of this Trust Agreement to such extent as shall be necessary to ensure that the Trust shall be classified for United States federal income tax purposes as a grantor trust at all times that any of the Trust Securities are Outstanding or to ensure that the Trust shall not be required to register as an "investment company" under the Investment Company Act; or (iv) to reduce or increase the Liquidation Amount per Trust Security and simultaneously to correspondingly increase or decrease the number of Trust Securities issued and Outstanding solely for the purpose of maintaining the eligibility of the Preferred Securities for quotation or listing on any national securities exchange or other organization on which the Preferred Securities are then quoted or listed (including, if applicable, the Nasdaq National Market); provided, however, that in the case of clause (ii), such action shall not adversely affect in any material respect the interests of any Securityholder, and provided further, that in the case of clause (iv) the aggregate Liquidation Amount of the Trust Securities Outstanding upon completion of any such reduction must be the same as the aggregate Liquidation Amount of the Trust Securities Outstanding immediately prior to such reduction or increase, and any amendments of this Trust Agreement shall become effective when notice thereof is given to the Securityholders (or, in the case of an amendment pursuant to clause (iv), as of the date specified in the notice).

(b) Except as provided in Section 601(c) or Section 1002(c) hereof, any provision of this Trust Agreement may be amended by the Trustees and the Depositor (i) with the consent of the Trust Securityholders representing not less than a majority (based upon Liquidation Amounts) of the Trust Securities then Outstanding; and (ii) upon receipt by the Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment shall not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status of an "investment company" under the Investment Company Act.

(c) In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Securityholder (such consent being obtained in accordance

with Section 603 or 606 hereof), this Trust Agreement may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date; or (ii) restrict the right of a Securityholder to institute suit for the enforcement of any such payment on or after such date; notwithstanding any other provision herein, without the unanimous consent of the Securityholders (such consent being obtained in accordance with Section 603 or 606 hereof), this paragraph (c) of this Section 1002 may not be amended.

(d) Notwithstanding any other provisions of this Trust Agreement, no Trustee shall enter into or consent to any amendment to this Trust Agreement which would cause the Trust to fail or cease to qualify for the exemption from status of an "investment company" under the Investment Company Act or to fail or cease to be classified as a grantor trust for United States federal income tax purposes.

(e) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Depositor, this Trust Agreement may not be amended in a manner which imposes any additional obligation on the Depositor.

(f) In the event that any amendment to this Trust Agreement is made, the Administrative Trustees shall promptly provide to the Depositor a copy of such amendment.

(g) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Trust Agreement which affects its own rights, duties or immunities under this Trust Agreement. The Property Trustee shall be entitled to receive an Opinion of Counsel and an Officers' Certificate stating that any amendment to this Trust Agreement has been effected in compliance with this Trust Agreement.

(h) Prior to the execution of an amendment to this Trust Agreement, the Property Trustee shall receive an Opinion of Counsel stating that such amendment does not conflict with the Trust being treated as a grantor trust for federal income tax purposes.

Section 1003. Separability. In case any provision in this Trust Agreement or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1004. Governing Law. This Trust Agreement and the rights and obligations of each of the Securityholders, the Trust and the Trustees with respect to this Trust Agreement and the Trust Securities shall be construed in accordance with and governed by the laws of the State of Delaware (without regard to its conflict of laws principles).

Section 1005. Payments Due on Non-Business Day. If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day which is a Business Day, except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day (and without any reduction of interest or any other payment in respect of any such acceleration), in each case with the same force and effect as

though made on the date fixed for such payment, and no distribution shall accumulate thereon for the period after such date.

Section 1006. Successors. This Trust Agreement shall be binding upon and shall inure to the benefit of any successor to the Depositor, the Trust or the Relevant Trustee(s), including any successor by operation of law. Except in connection with a consolidation, merger or sale involving the Depositor that is permitted under Article XII of the Indenture and pursuant to which the assignee agrees in writing to perform the Depositor's obligations hereunder, the Depositor shall not assign its obligations hereunder.

Section 1007. Headings. The Article and Section headings are for convenience only and shall not affect the construction of this Trust Agreement.

Section 1008. Reports, Notices and Demands. Any report, notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Securityholder or the Depositor may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Preferred Securityholder, to such Preferred Securityholder as such Securityholder's name and address may appear on the Securities Register; and (b) in the case of the Common Securityholder or the Depositor, to First Busey Corporation, 201 West Main Street, Urbana, Illinois 61801, Attention: Chief Executive Officer, facsimile no.: (217) 365-4592. Any notice to the Preferred Securityholders shall also be given to such owners as have, within two years preceding the giving of such notice, filed their names and addresses with the Property Trustee for that purpose. Such notice, demand or other communication to or upon a Securityholder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission.

Any notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon the Trust, the Property Trustee or the Administrative Trustees shall be given in writing addressed (until another address is published by the Trust) as follows: (a) with respect to the Property Trustee to Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration; (b) with respect to the Delaware Trustee, to Wilmington Trust Company, at the address above; and (c) with respect to the Administrative Trustees, to them at the address above for notices to the Depositor, marked "Attention: Administrative Trustees of First Busey Capital Trust I, c/o Chief Executive Officer, First Busey Corporation." Such notice, demand or other communication to or upon the Trust or the Property Trustee shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Trust or the Property Trustee.

Section 1009. Agreement Not to Petition. Each of the Trustees and the Depositor agrees for the benefit of the Securityholders that, until at least one year and one day after the Trust has been terminated in accordance with Article IX, they shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, insolvency, reorganization or other similar law (including, without limitation, the United States Bankruptcy Code of 1978, as amended) (collectively, "Bankruptcy Laws") or otherwise join in the commencement of any proceeding

against the Trust under any Bankruptcy Law. In the event the Depositor or any of the Trustees takes action in violation of this Section 1009, the Property Trustee agrees, for the benefit of the Securityholders, that at the expense of the Depositor (which expense shall be paid prior to the filing), it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Depositor or such Trustee against the Trust or the commencement of such action and raise the defense that the Depositor or such Trustee has agreed in writing not to take such action and should be stopped and precluded therefrom. The provisions of this Section 1009 shall survive the termination of this Trust Agreement.

Section 1010. Trust Indenture Act; Conflict with Trust Indenture Act.

(a) This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions.

(b) The Property Trustee shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act.

(c) If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Trust Agreement by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Trust Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Trust Agreement as so modified or to be excluded, as the case may be.

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

Section 1011. Acceptance of Terms of the Trust Agreement, the Guarantee and the Indenture. The receipt and acceptance of a trust security or any interest therein by or on behalf of a Securityholder or any Beneficial Owner, without any signature or further manifestation of assent, shall constitute the unconditional acceptance by the Securityholder and all others having a beneficial interest in such trust security of all the terms and provisions of this Trust Agreement and agreement to the subordination provisions and other terms of the guarantee and the Indenture, and shall constitute the agreement of the trust, such Securityholder and such others that the terms and provisions of this Trust Agreement shall be binding, operative and effective as between the trust and such Securityholder and such others. Without limiting the foregoing, by acceptance of a preferred security, each holder thereof shall be deemed to have agreed to treat, for all United States federal income tax and financial accounting purposes, the debentures as indebtedness of the Company and the preferred securities as evidencing an undivided beneficial ownership interest in the Debentures.

FIRST BUSEY CORPORATION, as Depositor

By

Name: Douglas C. Mills  
Title: Chief Executive Officer and  
Chairman of the Board

WILMINGTON TRUST COMPANY, as Property Trustee

By

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

WILMINGTON TRUST COMPANY, as Delaware Trustee

By

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

\_\_\_\_\_  
Douglas C. Mills, as Administrative Trustee

\_\_\_\_\_  
Barbara J. Kuhl, as Administrative Trustee

\_\_\_\_\_  
Barbara J. Jones, as Administrative Trustee

EXHIBIT A  
CERTIFICATE OF TRUST  
OF  
FIRST BUSEY CAPITAL TRUST I

THIS CERTIFICATE OF TRUST OF FIRST BUSEY CAPITAL TRUST I (the "Trust"), is being duly executed and filed by Wilmington Trust Company, a Delaware banking corporation, Douglas C. Mills, Barbara J. Kuhl, and Barbara J. Jones, each an individual, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 et seq.) (the "Act").

1. NAME. The name of the business trust formed hereby is First Busey Capital Trust I.

2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust in the State of Delaware is Wilmington Trust Company, Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration.

3. EFFECTIVE DATE. This Certificate of Trust shall be effective on May 15, 2001.

IN WITNESS WHEREOF, each of the undersigned, being a trustee of the Trust, has executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

WILMINGTON TRUST COMPANY, as Trustee

By /s/ Kathleen A. Pedelini

Name: Kathleen A. Pedelini  
-----  
Title: Administrative Account Manager  
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/s/ Douglas C. Mills  
-----  
Douglas C. Mills, as Administrative Trustee

/s/ Barbara J. Kuhl  
-----  
Barbara J. Kuhl, as Administrative Trustee

/s/ Barbara J. Jones  
-----  
Barbara J. Jones, as Administrative Trustee

## EXHIBIT B

THIS CERTIFICATE IS NOT TRANSFERABLE

CERTIFICATE NUMBER \_\_\_\_\_ NUMBER OF COMMON SECURITIES \_\_\_\_\_

CERTIFICATE EVIDENCING COMMON SECURITIES  
 OF  
 FIRST BUSEY CAPITAL TRUST I

COMMON SECURITIES  
 LIQUIDATION AMOUNT \$10 PER COMMON SECURITY

FIRST BUSEY CAPITAL TRUST I, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that FIRST BUSEY CORPORATION (the "Holder") is the registered owner of \_\_\_\_\_ (\_\_\_\_\_) common securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated the Common Securities (liquidation amount \$10 per Common Security) (the "Common Securities"). In accordance with Section 510 of the Trust Agreement (as defined below), the Common Securities are not transferable and any attempted transfer hereof shall be void. The designations, rights, privileges, restrictions, preferences, and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust dated as of \_\_\_\_\_, 2001, as the same may be amended from time to time (the "Trust Agreement"), including the designation of the terms of the Common Securities as set forth therein. The Trust shall furnish a copy of the Trust Agreement to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

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

IN WITNESS WHEREOF, one of the Administrative Trustees of the Trust has executed this certificate this \_\_\_\_ day of \_\_\_\_\_ 2001.

FIRST BUSEY CAPITAL TRUST I

By  
 Name: Douglas C. Mills  
 Title: Administrative Trustee

## EXHIBIT C

## AGREEMENT AS TO EXPENSES AND LIABILITIES

AGREEMENT AS TO EXPENSES AND LIABILITIES (this "Agreement") dated as of June \_\_, 2001 between FIRST BUSEY CORPORATION, a Nevada corporation (the "Company"), and FIRST BUSEY CAPITAL TRUST I, a Delaware business trust (the "Trust").

## RECITALS

WHEREAS, the Trust intends to issue its common securities (the "Common Securities") to, and receive \_\_\_% Subordinated Debentures due 2031 (the "Debentures") from, the Company and to issue and sell First Busey Capital Trust I \_\_\_% Cumulative Trust Preferred Securities (the "Preferred Securities") with such powers, preferences and special rights and restrictions as are set forth in the Amended and Restated Trust Agreement of the Trust dated as of June \_\_, 2001, as the same may be amended from time to time (the "Trust Agreement");

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

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

## ARTICLE I

Section 1.1. Guarantee by the Company. Subject to the terms and conditions hereof, the Company, including in its capacity as holder of the Common Securities, hereby irrevocably and unconditionally guarantees to each person or entity to whom the Trust is now or hereafter becomes indebted or liable (the "Beneficiaries") the full payment when and as due, of any and all Obligations (as hereinafter defined) to such Beneficiaries. As used herein, "Obligations" means any costs, expenses or liabilities of the Trust other than obligations of the Trust to pay to the holders of any Preferred Securities or other similar interests in the Trust the amounts due such holders pursuant to the terms of the Preferred Securities or such other similar interests, as the case may be. This Agreement is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

Section 1.2. Term of Agreement. This Agreement shall terminate and be of no further force and effect upon the later of (a) the date on which full payment has been made of all amounts payable to all holders of all the Preferred Securities (whether upon redemption, liquidation, exchange or otherwise); and (b) the date on which there are no Beneficiaries remaining; provided, however, that this Agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any holder of the Preferred Securities or any



Beneficiary must restore payment of any sums paid under the Preferred Securities, under any obligation under the Preferred Securities Guarantee Agreement dated the date hereof by the Company and Wilmington Trust Company as guarantee trustee, or under this Agreement for any reason whatsoever. This Agreement is continuing, irrevocable, unconditional and absolute.

Section 1.3. Waiver of Notice. The Company hereby waives notice of acceptance of this Agreement and of any obligation to which it applies or may apply, and the Company hereby waives presentment, demand for payment, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 1.4. No Impairment. The obligations, covenants, agreements and duties of the Company under this Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the extension of time for the payment by the Trust of all or any portion of the Obligations or for the performance of any other obligation under, arising out of, or in connection with, the Obligations;

(b) any failure, omission, delay or lack of diligence on the part of the Beneficiaries to enforce, assert or exercise any right, privilege, power or remedy conferred on the Beneficiaries with respect to the Obligations or any action on the part of the Trust granting indulgence or extension of any kind; or

(c) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust.

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

Section 1.5. Enforcement. A Beneficiary may enforce this Agreement directly against the Company, and the Company waives any right or remedy to require that any action be brought against the Trust or any other person or entity before proceeding against the Company.

## ARTICLE II

Section 2.1. Binding Effect. All guarantees and agreements contained in this Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Company and shall inure to the benefit of the Beneficiaries.

Section 2.2. Amendment. So long as there remains any Beneficiary or any Preferred Securities of any series are outstanding, this Agreement shall not be modified or amended in any manner adverse to such Beneficiary or to the holders of the Preferred Securities.

Section 2.3. Notices. Any notice, request or other communication required or permitted to be given hereunder shall be given in writing by delivering the same by facsimile transmission (confirmed by mail), telex, or by registered or certified mail, addressed as follows (and if so given, shall be deemed given when mailed or upon receipt of an answer back, if sent by telex):

First Busey Capital Trust I  
c/o First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61801  
Facsimile No.: (217) 365-4592  
Attention: Chief Executive Officer

First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61801  
Facsimile No.: (217) 365-4592  
Attention: Chief Executive Officer

Section 2.4. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois (without regard to conflict of laws principles).

[SIGNATURE PAGE FOLLOWS]

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

FIRST BUSEY CORPORATION

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

Name: Douglas C. Mills  
Title: Chief Executive Officer and  
Chairman of the Board

FIRST BUSEY CAPITAL TRUST I

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

Name: Barbara J. Kuhl  
Title: Administrative Trustee

## EXHIBIT D

CERTIFICATE NUMBER \_\_\_\_\_ NUMBER OF COMMON SECURITIES \_\_\_\_\_

CERTIFICATE EVIDENCING PREFERRED SECURITIES  
 OF  
 FIRST BUSEY CAPITAL TRUST I  
 \_\_\_\_\_% CUMULATIVE TRUST PREFERRED SECURITIES  
 (LIQUIDATION AMOUNT \$10 PER PREFERRED SECURITY)

CUSIP NO. \_\_\_\_\_

FIRST BUSEY CAPITAL TRUST I, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_ (the "Holder") is the registered owner of \_\_\_\_\_ preferred securities (the "Preferred Securities") of the Trust representing undivided beneficial interests in the assets of the Trust and designated the \_\_\_\_\_% Cumulative Trust Preferred Securities (Liquidation Amount \$10 per Preferred Security). The Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this Certificate duly endorsed and in proper form for transfer as provided in Section 504 of the Trust Agreement (as defined herein). The designations, rights, privileges, restrictions, preferences, and other terms and provisions of the Preferred Securities are set forth in, and this Certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust dated as of June \_\_, 2001, as the same may be amended from time to time (the "Trust Agreement"), including the designation of the terms of the Preferred Securities as set forth therein. The Holder is entitled to the benefits of the Preferred Securities Guarantee Agreement entered into by First Busey Corporation, a Nevada corporation, and Wilmington Trust Company, as guarantee trustee, dated as of June \_\_, 2001 (the "Guarantee"), to the extent provided therein. The Trust shall furnish a copy of the Trust Agreement and the Guarantee to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

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

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

IN WITNESS WHEREOF, the Administrative Trustees of the Trust have executed this Certificate as of this \_\_\_\_\_ day of June 2001.

FIRST BUSEY CAPITAL TRUST I

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

Name: Douglas C. Mills  
Title: Administrative Trustee

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

Name: Barbara J. Kuhl  
Title: Administrative Trustee

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

Name: Barbara J. Jones  
Title: Administrative Trustee

LEGEND

FOR CERTIFICATES EVIDENCING

GLOBAL PREFERRED SECURITIES ONLY:

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

[FORM OF REVERSE OF CERTIFICATE]

The Trust will furnish without charge to any registered owner of Preferred Securities who so requests, a copy of the Trust Agreement and the Guarantee. Any such request should be in writing and addressed to First Busey Capital Trust I, c/o First Busey Corporation, 201 West Main Street, Urbana, Illinois 61801 or to the Registrar named on the face of this Certificate.

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

TEN COM - as tenants in common UNIF GIFT MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors Act

TEN ENT - as tenants by the \_\_\_\_\_  
entireties (State)

JT TEN - as joint tenants with UNIF TRF MIN ACT - \_\_\_\_\_ Custodian (until age)  
right of survivorship \_\_\_\_\_ under  
and not as tenants Uniform (Minor) Transfers to  
in common Minors Act \_\_\_\_\_  
(State)

TOD - transfer on death  
direction in event  
owner's death, to  
person named on face  
and subject to TOD  
rules referenced

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

FOR VALUE RECEIVED, the undersigned hereby sell, assign and transfer unto: \_\_\_\_\_

\_\_\_\_\_  
(Please insert Social Security or other identifying number of assignee)

\_\_\_\_\_  
(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

\_\_\_\_\_ Preferred Securities represented by  
the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_

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

Dated: \_\_\_\_\_

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

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT  
MUST CORRESPOND WITH THE NAME AS  
WRITTEN UPON THE FACE OF THE  
CERTIFICATE IN EVERY PARTICULAR,  
WITHOUT ALTERNATION OR ENLARGEMENT  
OR ANY CHANGE WHATEVER.

SIGNATURE(S) GUARANTEED:

---

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION  
(BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH  
MEMBERSHIP IN AN APPROVED MEDALLION SIGNATURE GUARANTEE PROGRAM), PURSUANT TO  
S.E.C. RULE 17AD-15.

EXHIBIT E

FORM OF CERTIFICATE OF AUTHENTICATION

CERTIFICATE OF AUTHENTICATION

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

Dated: \_\_\_\_\_

WILMINGTON TRUST COMPANY,  
as Authenticating Agent and Registrar

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

Authorized Signatory



=====

PREFERRED SECURITIES GUARANTEE AGREEMENT

BY AND BETWEEN

FIRST BUSEY CORPORATION

AND

WILMINGTON TRUST COMPANY

Dated as of June \_\_, 2001

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310(a) .....	4.1(a)
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314(c) .....	2.5
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314(f) .....	2.1, 3.2
315(a) .....	3.1(d)
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315(d) .....	3.1(d)
316(a) .....	1.1, 2.6, 5.4
316(b) .....	5.3
317(a) .....	3.1
317(b) .....	Not Applicable
318(a) .....	2.1(a)
318(b) .....	2.1
318(c) .....	2.1(b)

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

## PREFERRED SECURITIES GUARANTEE AGREEMENT

THIS PREFERRED SECURITIES GUARANTEE AGREEMENT (this "Preferred Securities Guarantee"), dated as of June \_\_, 2001, is executed and delivered by FIRST BUSEY CORPORATION, a Nevada corporation (the "Guarantor"), and WILMINGTON TRUST COMPANY, a trust company organized and existing under the laws of Delaware, as trustee (the "Preferred Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of FIRST BUSEY CAPITAL TRUST I, a Delaware statutory business trust (the "Trust").

## RECITALS

WHEREAS, pursuant to an Amended and Restated Trust Agreement (the "Trust Agreement"), dated as of June \_\_, 2001, among the trustees of the Trust named therein, the Guarantor, as depositor, and the holders from time to time of undivided beneficial interests in the assets of the Trust, the Trust is issuing on the date hereof up to 2,371,134 preferred securities, having an aggregate liquidation amount of \$23,711,340 designated the \_\_\_\_% Cumulative Trust Preferred Securities (the "Preferred Securities");

WHEREAS, as incentive for the Holders to purchase the Preferred Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Preferred Securities Guarantee, to pay to the Holders of the Preferred Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Preferred Securities Guarantee for the benefit of the Holders.

## ARTICLE I

## DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions and Interpretation. In this Preferred Securities Guarantee, unless the context otherwise requires:

(a) capitalized terms used in this Preferred Securities Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;

(b) terms defined in the Trust Agreement as at the date of execution of this Preferred Securities Guarantee have the same meaning when used in this Preferred Securities Guarantee, unless otherwise defined in this Preferred Securities Guarantee;

(c) a term defined anywhere in this Preferred Securities Guarantee has the same meaning throughout;

(d) all references to "the Preferred Securities Guarantee" or "this Preferred Securities Guarantee" are to this Preferred Securities Guarantee as modified, supplemented or amended from time to time;

(e) all references in this Preferred Securities Guarantee to Articles and Sections are to Articles and Sections of this Preferred Securities Guarantee, unless otherwise specified;

(f) a term defined in the Trust Indenture Act has the same meaning when used in this Preferred Securities Guarantee, unless otherwise defined in this Preferred Securities Guarantee or unless the context otherwise requires; and

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

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

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

"Corporate Trust Office" means the office of the Preferred Guarantee Trustee at which the corporate trust business of the Preferred Guarantee Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Preferred Securities Guarantee is located at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration.

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

"Debentures" means the \_\_\_\_% Subordinated Debentures due June \_\_, 2031, of the Debenture Issuer held by the Property Trustee of the Trust.

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

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

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by the Trust: (i) any accrued and unpaid Distributions that are required to be paid on such Preferred Securities, to the extent the Trust shall have funds available therefor, (ii) the redemption price, including all

accrued and unpaid Distributions to the date of redemption (the "Redemption Price"), to the extent the Trust has funds available therefor, with respect to any Preferred Securities called for redemption by the Trust, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Trust (other than in connection with the distribution of the Debentures to the Holders in exchange for the Preferred Securities as provided in the Trust Agreement), the lesser of (A) the aggregate of the Liquidation Amount and all accrued and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Trust shall have funds available therefor (the "Liquidation Distribution"), and (B) the amount of assets of the Trust remaining available for distribution to Holders in liquidation of the Trust.

"Guarantor" means First Busey Corporation, a Nevada corporation.

"Holder" means a Person in whose name a Preferred Security is or Preferred Securities are registered in the Securities Register; provided, however, that, in determining whether the holders of the requisite percentage of the Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor, the Preferred Guarantee Trustee or any of their respective Affiliates.

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

"Indenture" means the Indenture, dated as of June \_\_, 2001, among the Debenture Issuer and Wilmington Trust Company, as trustee, and any indenture supplemental thereto pursuant to which the Debentures are to be issued to the Property Trustee of the Trust.

"Liquidation Amount" means the stated value of \$10 per Preferred Security.

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

"List of Holders" has the meaning set forth in Section 2.2 of this Preferred Securities Guarantee.

"Majority in Liquidation Amount of the Preferred Securities" means the holders of more than 50% of the Liquidation Amount (including the stated value that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all of the Preferred Securities.

"Officers' Certificate" means, with respect to any Person, a certificate signed by two authorized officers of such Person, at least one of whom shall be the principal executive officer, principal financial officer, principal accounting officer, treasurer or any vice president of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Preferred Securities Guarantee shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definition relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

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

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

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

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

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

"Securities Register" and "Securities Registrar" have the meanings assigned to such terms as in the Trust Agreement (as defined in the Indenture).



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

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

## ARTICLE II

### TRUST INDENTURE ACT

Section 2.1. Trust Indenture Act; Application. (a) This Preferred Securities Guarantee is subject to the provisions of the Trust Indenture Act that are required to be part of this Preferred Securities Guarantee and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Preferred Securities Guarantee limits, qualifies or conflicts with the duties imposed by Section 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

Section 2.2. The List of Holders of the Securities. (a) In the event the Preferred Guarantee Trustee is not also the Securities Registrar, the Guarantor shall provide the Preferred Guarantee Trustee with a list, in such form as the Preferred Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Preferred Securities (the "List of Holders") (i) within three Business Days after March 15, June 15, September 15 and December 15 in each year, and (ii) at any other time within 30 days of receipt by the Guarantor of a written request for a List of Holders as of a date no more than 15 days before such List of Holders is given to the Preferred Guarantee Trustee; provided, that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Preferred Guarantee Trustee by the Guarantor. The Preferred Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

Section 2.3. Reports by the Preferred Guarantee Trustee. On or before October 15 of each year, commencing October 15, 2001, the Preferred Guarantee Trustee shall provide to the Holders of the Preferred Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Preferred Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

Section 2.4. Periodic Reports to the Preferred Guarantee Trustee. The Guarantor shall provide to the Preferred Guarantee Trustee such documents, reports and information as required by Section 314 (if any) and the compliance certificate required by Section 314 of the Trust

Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

Section 2.5. Evidence of Compliance with Conditions Precedent. The Guarantor shall provide to the Preferred Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Preferred Securities Guarantee that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

Section 2.6. Events of Default; Waiver. The Holders of a Majority in Liquidation Amount of the Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Preferred Securities Guarantee, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 2.7. Event of Default; Notice. (a) The Preferred Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders of the Preferred Securities, notices of all Events of Default actually known to a Responsible Officer of the Preferred Guarantee Trustee, unless such defaults have been cured before the giving of such notice; provided, that, except in the case of a default by Guarantor under the terms of this Preferred Securities Guarantee on any of its payment obligations, the Preferred Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Preferred Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Preferred Securities.

(b) The Preferred Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Preferred Guarantee Trustee shall have received written notice, or of which a Responsible Officer of the Preferred Guarantee Trustee charged with the administration of the Trust Agreement shall have obtained actual knowledge of such Event of Default.

Section 2.8. Conflicting Interests. The Trust Agreement shall be deemed to be specifically described in this Preferred Securities Guarantee for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### ARTICLE III

#### POWERS, DUTIES AND RIGHTS OF THE PREFERRED GUARANTEE TRUSTEE

Section 3.1. Powers and Duties of the Preferred Guarantee Trustee. (a) This Preferred Securities Guarantee shall be held by the Preferred Guarantee Trustee for the benefit of the Holders of the Preferred Securities, and the Preferred Guarantee Trustee shall not transfer this Preferred Securities Guarantee to any Person except a Holder of Preferred Securities exercising his or her rights pursuant to Section 5.4(b) or to a Successor Preferred Guarantee Trustee on

acceptance by such Successor Preferred Guarantee Trustee of its appointment to act as Successor Preferred Guarantee Trustee. The right, title and interest of the Preferred Guarantee Trustee shall automatically vest in any Successor Preferred Guarantee Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Preferred Guarantee Trustee.

(b) If an Event of Default actually known to a Responsible Officer of the Preferred Guarantee Trustee has occurred and is continuing, the Preferred Guarantee Trustee shall enforce this Preferred Securities Guarantee for the benefit of the Holders of the Preferred Securities.

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

(d) No provision of this Preferred Securities Guarantee shall be construed to relieve the Preferred Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

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

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

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

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

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

Section 3.2. Certain Rights of the Preferred Guarantee Trustee. (a)  
Subject to the provisions of Section 3.1:

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

(ii) any direction or act of the Guarantor contemplated by this Preferred Securities Guarantee shall be sufficiently evidenced by an Officers' Certificate;

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

(iv) the Preferred Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or reregistration thereof);

(v) the Preferred Guarantee Trustee may consult with counsel, and the written advice or opinion of such counsel with respect to legal matters shall be full and complete

authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Preferred Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Preferred Securities Guarantee from any court of competent jurisdiction;

(vi) the Preferred Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Preferred Securities Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Preferred Guarantee Trustee such security and indemnity, reasonably satisfactory to the Preferred Guarantee Trustee, against the costs, expenses (including reasonable attorneys' fees and expenses and the expenses of the Preferred Guarantee Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Preferred Guarantee Trustee; provided that, nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Preferred Guarantee Trustee, upon the occurrence and during the continuance of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Preferred Securities Guarantee;

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

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

(ix) no third party shall be required to inquire as to the authority of the Preferred Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Preferred Securities Guarantee, both of which shall be conclusively evidenced by the Preferred Guarantee Trustee's or its agent's taking such action;

(x) whenever in the administration of this Preferred Securities Guarantee the Preferred Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Preferred Guarantee Trustee (A) may request instructions from the Holders of a Majority in Liquidation Amount of the Preferred Securities, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in conclusively relying on or acting in accordance with such instructions.

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

Section 3.3. Not Responsible for Recitals or Issuance of Guarantee. The Recitals contained in this Guarantee shall be taken as the statements of the Guarantor, and the Preferred Guarantee Trustee does not assume any responsibility for their correctness. The Preferred Guarantee Trustee makes no representation as to the validity or sufficiency of this Preferred Securities Guarantee.

#### ARTICLE IV

##### THE PREFERRED GUARANTEE TRUSTEE

Section 4.1. The Preferred Guarantee Trustee; Eligibility. (a) There shall at all times be a Preferred Guarantee Trustee which shall:

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

(ii) be a Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Preferred Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Preferred Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

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

Section 4.2. Appointment, Removal and Resignation of the Preferred Guarantee Trustee. (a) Subject to Section 4.2(b), the Preferred Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Preferred Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Preferred Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Preferred Guarantee Trustee and delivered to the Guarantor.

(c) The Preferred Guarantee Trustee appointed to office shall hold office until a Successor Preferred Guarantee Trustee shall have been appointed or until its removal or resignation. The Preferred Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Preferred Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Preferred Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Preferred Guarantee Trustee and delivered to the Guarantor and the resigning Preferred Guarantee Trustee.

(d) If no Successor Preferred Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Preferred Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Preferred Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Preferred Guarantee Trustee.

(e) No Preferred Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Preferred Guarantee Trustee.

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

#### ARTICLE V

#### GUARANTEE

Section 5.1. Guarantee. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders.

Section 5.2. Waiver of Notice and Demand. The Guarantor hereby waives notice of acceptance of this Preferred Securities Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3. Obligations not Affected. The obligations, covenants, agreements and duties of the Guarantor under this Preferred Securities Guarantee shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Trust;

(b) the extension of time for the payment by the Trust of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Debentures or any extension of the maturity date of the Debentures permitted by the Indenture);

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

(f) any failure or omission to receive any regulatory approval or consent required in connection with the Preferred Securities (or the common equity securities issued by the Trust), including the failure to receive any approval of the Board of Governors of the Federal Reserve System required for the redemption of the Preferred Securities;

(g) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(h) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

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



Section 5.4. Rights of the Holders. (a) The Holders of a Majority in Liquidation Amount of the Preferred Securities have the right to direct the time, method and place of conducting of any proceeding for any remedy available to the Preferred Guarantee Trustee in respect of this Preferred Securities Guarantee or exercising any trust or power conferred upon the Preferred Guarantee Trustee under this Preferred Securities Guarantee.

(b) Any Holder of Preferred Securities may institute and prosecute a legal proceeding directly against the Guarantor to enforce its rights under this Preferred Securities Guarantee, without first instituting and prosecuting a legal proceeding against the Trust, the Preferred Guarantee Trustee or any other Person.

Section 5.5. Guarantee of Payment. This Preferred Securities Guarantee creates a guarantee of payment and not of collection.

Section 5.6. Subrogation. The Guarantor shall be subrogated to all (if any) rights of the Holders of the Preferred Securities against the Trust in respect of any amounts paid to such Holders by the Guarantor under this Preferred Securities Guarantee; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Preferred Securities Guarantee, if, at the time of any such payment, any amounts are due and unpaid under this Preferred Securities Guarantee. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

Section 5.7. Independent Obligations. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the Preferred Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Preferred Securities Guarantee notwithstanding the occurrence of any event referred to in subsections (a) through (h), inclusive, of Section 5.3 hereof.

## ARTICLE VI

### LIMITATION OF TRANSACTIONS; SUBORDINATION

Section 6.1. Limitation on Transactions. So long as any of the Preferred Securities remain outstanding, if there shall have occurred and Event of Default under this Preferred Securities Guarantee Agreement, an event of default under the Trust Agreement or during an Extension Period (as defined in the Indenture), then (a) neither the Guarantor nor any of its Subsidiaries (as defined in the Indenture) shall declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock except as permitted in such circumstances by the Indenture, (b) the Guarantor shall not make any payment of principal or interest on or repay, repurchase or redeem any debt securities issued by the Guarantor which rank pari passu with or junior to the Debentures other than payments under this Preferred Securities Guarantee, and (c) the Guarantor

shall not redeem, purchase or acquire less than all of the Outstanding Debentures or any of the Preferred Securities.

Section 6.2. Ranking. This Preferred Securities Guarantee will constitute an unsecured obligation of the Guarantor and will rank (a) subordinate and junior in right of payment to all Senior Debt, Subordinated Debt and Additional Senior Obligations (as defined in the Indenture) of the Guarantor, (b) pari passu with the most senior preferred securities now or hereafter issued by the Guarantor and with any guarantee now or hereafter entered into by the Guarantor in respect of any preferred securities of any Affiliate of the Guarantor, and (c) senior to the Guarantor's common stock.

#### ARTICLE VII

##### TERMINATION

Section 7.1. Termination. This Preferred Securities Guarantee shall terminate upon (a) full payment of the Redemption Price of all the Preferred Securities, (b) full payment of the amounts payable in accordance with the Trust Agreement upon liquidation of the Trust, or (c) distribution of the Debentures to the Holders of the Preferred Securities. Notwithstanding the foregoing, this Preferred Securities Guarantee shall continue to be effective or shall be reinstated, as the case may be, if at any time any Holder of Preferred Securities must restore payment of any sums paid under the Preferred Securities or under this Preferred Securities Guarantee.

#### ARTICLE VIII

##### INDEMNIFICATION

Section 8.1. Exculpation. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Preferred Securities Guarantee and in a manner that such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Preferred Securities Guarantee or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions.

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

Section 8.2. Indemnification. The Guarantor agrees to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 8.2 shall survive the termination of this Preferred Securities Guarantee.

#### ARTICLE IX

#### MISCELLANEOUS

Section 9.1. Successors and Assigns. All guarantees and agreements contained in this Preferred Securities Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding.

Section 9.2. Amendments. Except with respect to any changes that do not adversely affect the rights of the Holders (in which case no consent of the Holders will be required), this Preferred Securities Guarantee may only be amended with the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred Securities. The provisions of Article VI of the Trust Agreement with respect to meetings of the Holders of the Preferred Securities apply to the giving of such approval.

Section 9.3. Notices. All notices provided for in this Preferred Securities Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

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

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890-0001

Attention: Corporate Trust Administration

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

First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61801  
Attention: Chief Executive Officer

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

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

Section 9.4. Benefit. This Preferred Securities Guarantee is solely for the benefit of the Holders of the Preferred Securities and, subject to Section 3.1(a), is not separately transferable from the Preferred Securities.

Section 9.5. Governing Law. This Preferred Securities Guarantee shall be governed by, and construed and interpreted in accordance with, the laws of the State of Illinois.

This Preferred Securities Guarantee is executed as of the day and year first above written.

FIRST BUSEY CORPORATION, as Guarantor

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

Douglas C. Mills  
Chief Executive Officer and Chairman  
of the Board

WILMINGTON TRUST COMPANY, as Preferred  
Guarantee Trustee

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[CHAPMAN AND CUTLER LETTERHEAD]

May 17, 2001

The Board of Directors  
First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61803

Re: First Busey Corporation  
First Busey Capital Trust I  
Registration Statement on Form S-3  
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Ladies and Gentlemen:

We have acted as counsel to First Busey Corporation, a Nevada corporation (the "Company") and Depositor of First Busey Capital Trust I, a Delaware statutory business trust (the "Trust"), in connection with the preparation of a Registration Statement on Form S-3 (the "Registration Statement") filed by the Company and the Trust with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), relating to (i) the proposed issuance by the Trust of \$20,000,000 aggregate Liquidation Amount of the Trust's \_\_\_% Cumulative Trust Preferred Securities due \_\_\_\_\_, 2031 (the "Preferred Securities") registered under the Securities Act; (ii) the Company's \_\_\_% Subordinated Debentures to be issued by the Company to the Trust (the "Debentures") registered under the Securities Act; and (iii) the Company's guarantee (the "Guarantee"), which guarantees the payment of distributions and payments on liquidation or redemption of the Preferred Securities as described therein. The Preferred Securities are issuable under an Amended and Restated Trust Agreement (the "Trust Agreement") to be entered into between the Company, as Depositor, Wilmington Trust Company, a Delaware trust company, as Delaware Trustee and as Property Trustee, and Douglas C. Mills, an individual, Barbara J. Kuhl, an individual, and Barbara J. Jones, an individual, each an Administrative Trustee; the Debentures are issuable under an indenture (the "Indenture") to be entered into between the Company and Wilmington Trust Company, as Trustee; and the Guarantee relates to the Guarantee Agreement (the "Guarantee Agreement") to be entered into between the Company and Wilmington Trust Company, as Guarantee Trustee. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Trust Agreement, the Indenture and the Guarantee Agreement, as applicable.

In connection with our rendering the opinions expressed herein, we have examined originals or copies, certified or otherwise identified to our satisfaction, of: (i) the certificate of trust filed by the Trust with the Secretary of State of the State of Delaware on May 15, 2001; (ii)

the form of the Trust Agreement; (iii) the form of the Preferred Securities; (iv) the form of the Guarantee Agreement; (v) the form of the Debentures; (vi) the form of the Indenture, in each case in the form filed as an exhibit to the Registration Statement; and (vii) the Registration Statement. We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such other documents, certificates and records and have reviewed such questions of law as we have considered necessary and appropriate for the purposes of our opinions set forth below.

In rendering our opinions, we have assumed, without investigation, the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons and, with respect to all parties to agreements or instruments relevant hereto other than the Company and the Trust, that such parties had the requisite power and authority (corporate or otherwise) to execute, deliver and perform such agreements or instruments, that such agreements or instruments have been duly authorized by all requisite action (corporate or otherwise), executed and delivered by such parties and that such agreements or instruments are the valid, binding and enforceable obligations of such parties. In addition, we have assumed that the Trust Agreement, the Preferred Securities, the Guarantee, the Debentures and the Indenture, when executed, will be executed in substantially the form reviewed by us. We have also assumed without verification that, with respect to the minutes of any meetings of the Board of Directors or any committees thereof of the Company that we have examined, due notice of the meetings was given or duly waived, the minutes accurately and completely reflect all actions taken at the meetings and a quorum was present and acting throughout the meetings. As to questions of fact material to our opinions, we have relied upon certificates of officers of the Company and the Trust and of public officials.

Based on the foregoing, we are of the opinion that:

(1) The issuance of the Debentures has been duly authorized by all requisite corporate action and, when executed and authenticated as specified in the Indenture and delivered and paid for in the manner described in the Registration Statement, the Debentures will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(2) The Guarantee has been duly authorized by all requisite corporate action and, when duly executed as specified in the Guarantee Agreement and delivered in the manner described in the Registration Statement, the Guarantee will constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

The opinions set forth above are subject to the following qualifications and exceptions:

The enforceability of the operative documents, or any provision thereof, may be limited by and/or subject to bankruptcy (including, without limitation, executory contracts provisions), insolvency, reorganization, receivership, moratorium, fraudulent conveyance or transfer, or other laws affecting the rights and remedies of creditors generally, or similar federal or state laws, by general equitable principles, by rules of law governing specific performance, appointment of receivers, injunctive relief and other equitable remedies, and by remedies or the exercise of certain rights including, without limitation, commercial reasonableness or conscionability, reasonable notice of disposition, specific performance, or enforcement, limitation on sale or encumbrance provisions, waivers or eliminations of rights such as statutory rights of redemption, or of jury trial, separation or aggregation of property at foreclosure or enforced sale, application of sale or judgment proceeds, and multiplicity, inconsistency, waiver or omission or delay in the enforcement of remedies.

We are licensed to practice law only in the State of Illinois.

With respect to matter of Delaware trust law, we are relying upon the opinion of Richards, Layton & Finger, P.A., Wilmington, Delaware, special counsel to the Company and the Trust.

The opinions expressed above concern only the effect of laws as now in effect and are rendered as of the date hereof. We undertake no, and hereby disclaim any, obligation to revise or supplement this opinion should such laws be changed by legislative action, judicial decision, or otherwise after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this letter.

This opinion letter is limited to the matters stated herein and no opinions may be implied or inferred beyond the matters expressly stated herein.

We hereby consent to your filing of this opinion as an exhibit to the Registration Statement, and to the reference to our firm under the caption "Legal Matters" contained in the Prospectus included therein.

Very truly yours,

CHAPMAN AND CUTLER

SDarcy/MBoba

[RICHARDS, LAYTONS FINGER LETTERHEAD]

May 16, 2001

First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61801

Re: First Busey Capital Trust I

Ladies and Gentlemen:

We have acted as special Delaware counsel for First Busey Capital Trust I, a Delaware business trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

(a) The Certificate of Trust of the Trust (the "Certificate of Trust"), as filed with the office of the Secretary of State of the State of Delaware (the "Secretary of State") on May 15, 2001;

(b) The Trust Agreement of the Trust, dated as of May 15, 2001 (the "Original Trust Agreement"), between First Busey Corporation, a Nevada corporation (the "Company") and Chase Manhattan Bank USA, National Association, as trustee;

(c) The Registration Statement (the "Registration Statement") on Form S-3, including a preliminary prospectus (the "Prospectus"), relating to the Trust Preferred Securities of the Trust representing preferred undivided beneficial interests in the Trust (each, a "Preferred Security" and collectively, the "Preferred Securities"), to be filed by the Company and the Trust with the Securities and Exchange Commission on or about May 17, 2001.



First Busey Corporation  
May 16, 2001  
Page 2

(d) A form of Amended and Restated Trust Agreement for the Trust, to be entered into between the Company and the trustees of the Trust named therein (including the Exhibits thereto) (together with the Original Trust Agreement, the "Trust Agreement"), to be filed as an exhibit to the Registration Statement; and

(e) A Certificate of Good Standing for the Trust, dated May 16, 2001, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Trust Agreement.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (e) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (e) above) that is referred to in or incorporated by reference into the documents reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Trust Agreement will constitute the entire agreement among the parties thereto with respect to the subject matter thereof, including with respect to the creation, operation and termination of the Trust, and that the Trust Agreement and the Certificate of Trust will be in full force and effect and will not be amended, (ii) except to the extent provided in paragraph 1 below, the due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its organization or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom a Preferred Security is to be issued by the Trust (collectively, the "Preferred Security Holders") of a Preferred Security Certificate for such Preferred Security and the payment for such Preferred Security, in accordance with the Trust Agreement and the Registration Statement, and any related registration statement filed pursuant to Rule 462(b) (a "Rule 462(b) Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), and (vii) that the Preferred Securities are authenticated, issued and sold to the Preferred Security Holders in accordance with the Trust Agreement and the Registration Statement and any Rule 462(b) Registration Statement. We have

First Busey Corporation  
May 16, 2001  
Page 3

not participated in the preparation of the Registration Statement or the Prospectus and assume no responsibility for their contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder which are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Trust has been duly created and is validly existing in good standing as a business trust under the Delaware Business Trust Act, 12 Del. C.ss.3801, et. seq.

2. The Preferred Securities of the Trust, including any Preferred Securities issued or sold under any Rule 462(b) Registration Statement, will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable beneficial interests in the assets of the Trust.

3. The Preferred Security Holders, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Preferred Security Holders may be obligated to make payments as set forth in the Trust Agreement.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. We hereby consent to the use of our name under the heading "Legal Opinions" in the Prospectus and any supplements thereto and to incorporation by reference of this opinion into any Rule 462(b) Registration Statement. In giving the foregoing consents, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

Richards, Layton & Finger, P.A.

EAM/gmh

[CHAPMAN AND CUTLER LETTERHEAD]

May 15, 2001

The Board of Directors  
First Busey Corporation  
201 West Main Street  
Urbana, Illinois 61801

Re: Registration Statement on Form S-3  
Tax Opinion Regarding Certain Federal Income Tax  
Consequences of the Purchase, Ownership and  
Disposition of the Cumulative Trust Preferred Securities  
to be Issued by First Busey Capital Trust I  
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Ladies and Gentlemen:

We have acted as special counsel to First Busey Corporation, a Nevada corporation (the "Company"), and Depositor of First Busey Capital Trust I, a Delaware statutory business trust (the "Trust"), in connection with the preparation of a Registration Statement on Form S-3 (the "Registration Statement") filed by the Company and the Trust with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), relating to (i) the proposed issuance by the Trust of \$20,000,000 aggregate Liquidation Amount of the Trust's Cumulative Trust Preferred Securities due \_\_\_\_\_, 2031 (the "Preferred Securities") registered under the Securities Act; (ii) the Company's Subordinated Debentures to be issued by the Company to the Trust (the "Debentures") registered under the Securities Act; and (iii) the Company's guarantee (the "Guarantee"), which guarantees the payment of distributions and payments on liquidation or redemption of the Preferred Securities as described therein. The Preferred Securities are issuable under an Amended and Restated Trust Agreement (the "Trust Agreement") to be entered into between the Company, as Depositor, Wilmington Trust Company, a Delaware trust company, as Delaware Trustee and as Property Trustee, and Douglas C. Mills, an individual, Barbara J. Kuhl, an individual, and Barbara J. Jones, an individual, each an Administrative Trustee; the Debentures are issuable under an indenture (the "Indenture") to be entered into between the Company and Wilmington Trust Company, as Trustee; and the Guarantee relates to the Guarantee Agreement (the "Guarantee Agreement") to be entered into between the Company and Wilmington Trust Company, as Guarantee Trustee. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Trust Agreement, the Indenture and the Guarantee Agreement, as applicable. All

capitalized terms used in this opinion letter and not otherwise defined herein have the same meaning as set forth in the Registration Statement.

In rendering our opinion, we have reviewed various documents relating to the Preferred Securities, the Trust and the Debentures. In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such latter documents. We have further assumed that each of the parties to each of the documents, certificates, letters of representation or other similar materials relating, directly or indirectly, to the issuance of the Preferred Securities (the "Transaction Documents") and the Debentures and the creation of the Trust has and will fully comply with all of its obligations thereunder without amendment or waiver, and that there are not, and will not be any, arrangements, understandings or agreements among any of the parties relating to the issuance of the Preferred Securities or the Debentures and the creation of the Trust other than those expressly set forth in the Transaction Documents.

Based on the foregoing, we are of the opinion that, under existing United States Federal income tax law as of the date hereof, assuming the accuracy of the aforementioned representations and assumptions on the date hereof as well as continuing satisfaction of such representations and assumptions, although there is no definitive authority on the facts presented here (i) the Debentures will be treated as indebtedness for United States Federal income tax purposes and (ii) the Trust will be classified for United States Federal income tax purposes as a grantor trust and not as an association taxable as a corporation and, accordingly, each owner of Preferred Securities will be treated as owning an undivided interest in the Debentures. Furthermore, the summary of the United States Federal income tax consequences to the owners of the Preferred Securities set forth under the heading "MATERIAL FEDERAL INCOME TAX CONSEQUENCES" in the Registration Statement is materially correct.

Our opinion is based on the Internal Revenue Code of 1986, the regulations promulgated thereunder and other relevant authorities and law, all as in effect on the date hereof. Consequently, future changes in the Internal Revenue Code of 1986, the regulations promulgated thereunder and other relevant authorities and law may cause the tax treatment of the Preferred Securities, the Debentures and the Trust to be materially different from that described above. Our opinion represents only our legal judgment and, unlike a tax ruling, is binding neither on the Internal Revenue Service nor a court of law, and has no official status of any kind. The Internal Revenue Service or a court of law could disagree with the opinions expressed herein.

This opinion, as qualified and limited herein, is strictly limited to the characterization of the Debentures and the Preferred Securities and the classification of the Trust for United States Federal income tax purposes, and we express no opinion with respect to any other considerations which may arise relating to the Preferred Securities, the Debentures or the Trust, any other taxes or any other matters arising under United States Federal, state, local or foreign law.

This opinion is solely for the benefit of the above-named addressees, and any subsequent holder of Preferred Securities, and only relates to the aforementioned Preferred Securities, the Debentures and the Trust, and may not be relied upon by any other person in any manner whatsoever. This opinion should not be quoted in whole or in part or otherwise referred to, or relied upon, nor be filed with or furnished to any governmental agency or other person or entity, without the prior written consent of this firm.

Respectfully submitted,

CHAPMAN AND CUTLER

JDBerry/MCBoba

## EXHIBIT 12.1

FIRST BUSEY CORPORATION  
 RATIO OF EARNINGS TO FIXED CHARGES(4):

	AS OF AND FOR THE THREE MONTHS ENDED MARCH 31,		AS OF AND FOR THE YEAR ENDED DECEMBER 31,				
	2001	2000	2000	1999	1998	1997	1996
INCOME BEFORE INCOME TAXES	6,432	5,566	21,290	17,950	16,503	14,750	13,047
PLUS:							
INTEREST	13,581	11,465	50,476	34,920	32,975	31,119	30,033
OCCUPANCY EXPENSE	802	725	3,115	2,690	2,497	2,225	1,936
EARNINGS	20,815	17,756	74,881	55,560	51,975	48,094	45,016
INTEREST	13,581	11,465	50,476	34,920	32,975	31,119	30,033
OCCUPANCY EXPENSE	802	725	3,115	2,690	2,497	2,225	1,936
FIXED CHARGES	14,383	12,190	53,591	37,610	35,472	33,344	31,969
RATIO OF EARNINGS TO FIXED CHARGES, INCLUDING DEPOSIT INTEREST	1.45	1.46	1.40	1.48	1.47	1.44	1.41
INCOME BEFORE INCOME TAXES	6,432	5,566	21,290	17,950	16,503	14,750	13,047
PLUS:							
INTEREST, NON DEPOSIT	1,554	2,005	8,190	3,835	2,333	1,117	1,323
OCCUPANCY EXPENSE	802	725	3,115	2,690	2,497	2,225	1,936
EARNINGS	8,788	8,296	32,595	24,475	21,333	18,092	16,306
INTEREST, NON DEPOSIT	1,554	2,005	8,190	3,835	2,333	1,117	1,323
OCCUPANCY EXPENSE	802	725	3,115	2,690	2,497	2,225	1,936
FIXED CHARGES	2,356	2,730	11,305	6,525	4,830	3,342	3,259
RATIO OF EARNINGS TO FIXED CHARGES, EXCLUDING DEPOSIT INTEREST	3.73	3.04	2.88	3.75	4.42	5.41	5.00

## CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the Prospectus forming a part of the Registration Statement on Form S-3 filed by First Busey Corporation and First Busey Capital Trust I of our report dated February 8, 2001, on our audit of the consolidated statements of financial position of First Busey Corporation and subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2000, included in the Annual Report to stockholders and incorporated by reference in the December 31, 2000 Form 10-K of First Busey Corporation and to the reference to our firm under the heading "Experts" in the Prospectus/Registration Statement.

/s/ McGLADREY & PULLEN, LLP

McGLADREY & PULLEN, LLP  
Champaign, Illinois  
May 16, 2001

Registration No.:

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

First Busey Corporation  
(Exact name of obligor as specified in its charter)

Nevada  
(State of incorporation)

37-1078406  
(I.R.S. employer identification no.)

201 West Main Street, Urbana, Illinois  
(Address of principal executive offices)

61801  
(Zip Code)

\_\_\_% Subordinated Debentures of First Busey Corporation  
(Title of the indenture securities)



ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Federal Deposit Insurance Co. Five Penn Center Suite #2901 Philadelphia, PA	State Bank Commissioner Dover, Delaware
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- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 16th day of May, 2001.

WILMINGTON TRUST COMPANY

[SEAL]

Attest: /s/ [Assistant Secretary]

By: /s/ Donald G. MacKelcan

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Assistant Secretary

-----  
Name: Donald G. MacKelcan  
Title: Vice President

## EXHIBIT A

## AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

## AMENDED CHARTER

OR

## ACT OF INCORPORATION

OF

## WILMINGTON TRUST COMPANY

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered

to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold, purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may

receive and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country;

to receive, collect, receipt for, and dispose of interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or

could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

- (1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and
- (2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
- (2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the

preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of

whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.



(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the By-Laws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall

be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agents and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment

of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) (1) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not

with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to in any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation or By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual, firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of

transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of

securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

AS EXISTING ON FEBRUARY 20, 2000

## BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I  
STOCKHOLDERS' MEETINGS

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II  
DIRECTORS

Section 1. The authorized number of directors that shall constitute the Board of Directors shall be fixed from time to time by or pursuant to a resolution passed by a majority of the Board within the parameters set by the Charter of the Bank. No more than two directors may also be employees of the Company or any affiliate thereof.

Section 2. Except as provided in these Bylaws or as otherwise required by law, there shall be no qualifications for election or service as directors of the Company. In addition to any other provisions of these Bylaws, to be qualified for nomination for Election or appointment to the Board of Directors each person must have not attained the age of sixty-nine years at the time of such election or appointment, provided however, the Nominating and Corporate Governance Committee may waive such qualification as to a particular candidate otherwise qualified to serve as a director upon a good faith determination by such committee that such a waiver is in the best interests of the Company and its stockholders. The Chairman of the Board of Directors shall not be qualified to continue to serve as a director upon the



termination of his or her services in that office for any reason.

Section 3. The class of Directors so elected shall hold office for three years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it

and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or divisions of the Company as it may deem advisable.

### ARTICLE III COMMITTEES

#### Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for

the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

#### Section 2. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

#### Section 3. Compensation Committee

(A) The Compensation Committee shall be composed of not more than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters,

including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 4. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 5. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

### ARTICLE IV OFFICERS

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time

confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors. In the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

#### ARTICLE V STOCK AND STOCK CERTIFICATES

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

Section 2. Certificates of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a

record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

ARTICLE VI  
SEAL

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words  
"Wilmington Trust Company" within the inner circle  
the words "Wilmington, Delaware."

ARTICLE VII  
FISCAL YEAR

Section 1. The fiscal year of the Company shall be the calendar year.

ARTICLE VIII  
EXECUTION OF INSTRUMENTS OF THE COMPANY

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity

as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
COMPENSATION OF DIRECTORS AND MEMBERS OF COMMITTEES

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
INDEMNIFICATION

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director or officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.



(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
AMENDMENTS TO THE BY-LAWS

Section 1. These By-Laws may be altered, amended or repealed, in whole or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

## SECTION 321(b) CONSENT

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: May 16, 2001  
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By: /s/ Donald G. MacKelcan  
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Name: Donald G. MacKelcan  
Title: Vice President



## LIABILITIES

Deposits:		
In domestic offices.....		5,238,186
	Noninterest-bearing .....	988,834
	Interest-bearing.....	4,249,352
Federal funds purchased and Securities sold under agreements to repurchase.....		404,964
Demand notes issued to the U.S. Treasury.....		30,757
Trading liabilities (from Schedule RC-D).....		0
Other borrowed money:.....		////////
	With original maturity of one year or less.....	662,000
	With original maturity of more than one year.....	43,000
Bank's liability on acceptances executed and outstanding.....		0
Subordinated notes and debentures.....		0
Other liabilities (from Schedule RC-G).....		139,606
Total liabilities.....		6,518,513

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....		0
Common Stock.....		500
Surplus (exclude all surplus related to preferred stock).....		62,118
Undivided profits and capital reserves.....		423,463
Net unrealized holding gains (losses) on available-for-sale securities.....		(4,777)
Total equity capital.....		481,304
Total liabilities, limited-life preferred stock, and equity capital.....		6,999,817

Registration No.:

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)\_\_\_

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer  
identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

First Busey Capital Trust I  
(Exact name of obligor as specified in its charter)

Delaware  
(State of incorporation)

applied for  
(I.R.S. employer identification no.)

201 West Main Street, Urbana, Illinois  
(Address of principal executive offices)

61801  
(Zip Code)

\_\_\_% Cumulative Trust Preferred Securities of First Busey Capital Trust I  
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Federal Deposit Insurance Co. Five Penn Center Suite #2901 Philadelphia, PA	State Bank Commissioner Dover, Delaware
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- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 16th day of May, 2001.

WILMINGTON TRUST COMPANY

[SEAL]

Attest: /s/ Assistant Secretary  
 -----  
 Assistant Secretary

By: /s/ Donald G. MacKelcan  
 -----  
 Name: Donald G. MacKelcan  
 Title: Vice President

## EXHIBIT A

## AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

## AMENDED CHARTER

OR

## ACT OF INCORPORATION

OF

## WILMINGTON TRUST COMPANY

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third: - (a) The nature of the business and the objects and purpose proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold, purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may



receive and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country;

to receive, collect, receipt for, and dispose of interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or

could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

- (1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and
- (2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
- (2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the

preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of

whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the By-Laws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall

be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agents and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) (1) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not



with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to in any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation or By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual, firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of

transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of

securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

AS EXISTING ON FEBRUARY 20, 2000

## BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I  
STOCKHOLDERS' MEETINGS

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II  
DIRECTORS

Section 1. The authorized number of directors that shall constitute the Board of Directors shall be fixed from time to time by or pursuant to a resolution passed by a majority of the Board within the parameters set by the Charter of the Bank. No more than two directors may also be employees of the Company or any affiliate thereof.

Section 2. Except as provided in these Bylaws or as otherwise required by law, there shall be no qualifications for election or service as directors of the Company. In addition to any other provisions of these Bylaws, to be qualified for nomination for Election or appointment to the Board of Directors each person must have not attained the age of sixty-nine years at the time of such election or appointment, provided however, the Nominating and Corporate Governance Committee may waive such qualification as to a particular candidate otherwise qualified to serve as a director upon a good faith determination by such committee that such a waiver is in the best interests of the Company and its stockholders. The Chairman of the Board of Directors shall not be qualified to continue to serve as a director upon the termination of his or her services in that office for any reason.

Section 3. The class of Directors so elected shall hold office for three years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or divisions of the Company as it may deem advisable.

ARTICLE III  
COMMITTEES

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for

the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

#### Section 2. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

#### Section 3. Compensation Committee

(A) The Compensation Committee shall be composed of not more than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters,



including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 4. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 5. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

### ARTICLE IV OFFICERS

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors. In the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

#### ARTICLE V STOCK AND STOCK CERTIFICATES

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

Section 2. Certificates of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

ARTICLE VI  
SEAL

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words  
"Wilmington Trust Company" within the inner circle  
the words "Wilmington, Delaware."

ARTICLE VII  
FISCAL YEAR

Section 1. The fiscal year of the Company shall be the calendar year.

ARTICLE VIII  
EXECUTION OF INSTRUMENTS OF THE COMPANY

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
COMPENSATION OF DIRECTORS AND MEMBERS OF COMMITTEES

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
INDEMNIFICATION

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director or officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
AMENDMENTS TO THE BY-LAWS

Section 1. These By-Laws may be altered, amended or repealed, in whole or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

## EXHIBIT C

## SECTION 321(b) CONSENT

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: May 16, 2001  
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By: /s/ Donald G. MacKelcan  
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Name: Donald G. MacKelcan  
Title: Vice President





## LIABILITIES

Deposits:	
In domestic offices.....	5,238,186
Noninterest-bearing . . . . .	988,834
Interest-bearing. . . . .	4,249,352
Federal funds purchased and Securities sold under agreements to repurchase.....	404,964
Demand notes issued to the U.S. Treasury.....	30,757
Trading liabilities (from Schedule RC-D).....	0
Other borrowed money:.....	////////
With original maturity of one year or less.....	662,000
With original maturity of more than one year.....	43,000
Bank's liability on acceptances executed and outstanding.....	0
Subordinated notes and debentures.....	0
Other liabilities (from Schedule RC-G).....	139,606
Total liabilities.....	6,518,513

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....	0
Common Stock.....	500
Surplus (exclude all surplus related to preferred stock).....	62,118
Undivided profits and capital reserves.....	423,463
Net unrealized holding gains (losses) on available-for-sale securities.....	(4,777)
Total equity capital.....	481,304
Total liabilities, limited-life preferred stock, and equity capital.....	6,999,817

Registration No.:

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

First Busey Corporation  
(Exact name of obligor as specified in its charter)

Nevada  
(State of incorporation)

37-1078406  
(I.R.S. employer identification no.)

201 West Main Street, Urbana, Illinois  
(Address of principal executive offices)

61801  
(Zip Code)

Guarantee of Preferred Securities  
(Title of the indenture securities)

ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Federal Deposit Insurance Co.	State Bank Commissioner
Five Penn Center	Dover, Delaware
Suite #2901	
Philadelphia, PA	

- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 16th day of May, 2001.

WILMINGTON TRUST COMPANY

[SEAL]

Attest: /s/ Assistant Secretary  
-----  
Assistant Secretary

By: /s/ Donald G. MacKelcan  
-----  
Name: Donald G. MacKelcan  
Title: Vice President

## EXHIBIT A

## AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

## AMENDED CHARTER

OR

ACT OF INCORPORATION

OF

WILMINGTON TRUST COMPANY

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered

to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold, purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may

receive and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country;

to receive, collect, receipt for, and dispose of interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or

could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

- (1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and
- (2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;
- (2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the



preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of

whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the By-Laws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall

be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agents and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment

of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) (1) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not

with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to in any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation or By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual, firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of

transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of

securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."



EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

AS EXISTING ON FEBRUARY 20, 2000

## BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I  
STOCKHOLDERS' MEETINGS

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each share of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II  
DIRECTORS

Section 1. The authorized number of directors that shall constitute the Board of Directors shall be fixed from time to time by or pursuant to a resolution passed by a majority of the Board within the parameters set by the Charter of the Bank. No more than two directors may also be employees of the Company or any affiliate thereof.

Section 2. Except as provided in these Bylaws or as otherwise required by law, there shall be no qualifications for election or service as directors of the Company. In addition to any other provisions of these Bylaws, to be qualified for nomination for Election or appointment to the Board of Directors each person must have not attained the age of sixty-nine years at the time of such election or appointment, provided however, the Nominating and Corporate Governance Committee may waive such qualification as to a particular candidate otherwise qualified to serve as a director upon a good faith determination by such committee that such a waiver is in the best interests of the Company and its stockholders. The Chairman of the Board of Directors shall not be qualified to continue to serve as a director upon the

termination of his or her services in that office for any reason.

Section 3. The class of Directors so elected shall hold office for three years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it

and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or divisions of the Company as it may deem advisable.

ARTICLE III  
COMMITTEES

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for

the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

#### Section 2. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

#### Section 3. Compensation Committee

(A) The Compensation Committee shall be composed of not more than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters,

including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 4. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 5. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

### ARTICLE IV OFFICERS

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time

confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors. In the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

#### ARTICLE V STOCK AND STOCK CERTIFICATES

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

Section 2. Certificates of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a



record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

ARTICLE VI  
SEAL

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words  
"Wilmington Trust Company" within the inner circle  
the words "Wilmington, Delaware."

ARTICLE VII  
FISCAL YEAR

Section 1. The fiscal year of the Company shall be the calendar year.

ARTICLE VIII  
EXECUTION OF INSTRUMENTS OF THE COMPANY

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity

as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
COMPENSATION OF DIRECTORS AND MEMBERS OF COMMITTEES

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
INDEMNIFICATION

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director or officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
AMENDMENTS TO THE BY-LAWS

Section 1. These By-Laws may be altered, amended or repealed, in whole or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

## SECTION 321(b) CONSENT

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: May 16, 2001  
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By: /s/ Donald G. MacKelcan  
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Name: Donald G. MacKelcan  
Title: Vice President

## NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

## REPORT OF CONDITION

Consolidating domestic subsidiaries of the

WILMINGTON TRUST COMPANY of WILMINGTON

-----  
Name of Bank City  
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in the State of DELAWARE, at the close of business on December 31, 2000.  
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## ASSETS

Thousands of dollars

Cash and balances due from depository institutions:		
Noninterest-bearing balances and currency and coins.....		218,332
Interest-bearing balances.....		0
Held-to-maturity securities.....		19,838
Available-for-sale securities.....		1,378,378
Federal funds sold and securities purchased under agreements to resell.....		463,241
Loans and lease financing receivables:		
Loans and leases, net of unearned income.....	4,724,939	
LESS: Allowance for loan and lease losses.....	70,118	
LESS: Allocated transfer risk reserve.....	0	
Loans and leases, net of unearned income, allowance, and reserve.....		4,654,821
Assets held in trading accounts.....		0
Premises and fixed assets (including capitalized leases).....		124,599
Other real estate owned.....		661
Investments in unconsolidated subsidiaries and associated companies.....		1,697
Customers' liability to this bank on acceptances outstanding.....		0
Intangible assets.....		4,727
Other assets.....		133,523
Total assets.....		6,999,817

CONTINUED ON NEXT PAGE

## LIABILITIES

Deposits:		
In domestic offices.....		5,238,186
	Noninterest-bearing .....	988,834
	Interest-bearing.....	4,249,352
Federal funds purchased and Securities sold under agreements to repurchase.....		404,964
Demand notes issued to the U.S. Treasury.....		30,757
Trading liabilities (from Schedule RC-D).....		0
Other borrowed money:.....		////////
	With original maturity of one year or less.....	662,000
	With original maturity of more than one year.....	43,000
Bank's liability on acceptances executed and outstanding.....		0
Subordinated notes and debentures.....		0
Other liabilities (from Schedule RC-G).....		139,606
Total liabilities.....		6,518,513

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....		0
Common Stock.....		500
Surplus (exclude all surplus related to preferred stock).....		62,118
Undivided profits and capital reserves.....		423,463
Net unrealized holding gains (losses) on available-for-sale securities.....		(4,777)
Total equity capital.....		481,304
Total liabilities, limited-life preferred stock, and equity capital.....		6,999,817