

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**Form S-3**

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

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**KCPL FINANCING II**

**KANSAS CITY POWER & LIGHT  
COMPANY**

**KCPL FINANCING III**

(Exact name of registrant as specified in their Trust Agreements)

(Exact name of registrant as specified in its charter)

**Delaware**

**Missouri**

(State or other jurisdiction of incorporation or organization)

**43-1764671  
43-1764672**

**44-0308720**

(I.R.S. Employer Identification No.)

**1201 Walnut  
Kansas City, Missouri 64106-2124  
(816) 556-2200**

(Address, including zip code, and telephone number, including area code, of each registrant's principal executive offices)

**Jeanie Sell Latz**

Executive Vice President and Chief Legal Officer  
1201 Walnut  
Kansas City, Missouri 64106-2124  
(816) 556-2936

(Name, address, including zip code, and telephone number, including area code, of agent for service for each registrant)

With copies to:

**Steven R. Loeshelle**  
Dewey Ballantine LLP  
1301 Avenue of the Americas  
New York, New York 10019-6092

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If the only securities 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, please 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(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered (1)	Proposed maximum aggregate offering price (1)	Amount of registration fee
Kansas City Power & Light Company Senior Debt Securities			
Kansas City Power & Light Company Subordinated Debt Securities			
KCPL Financing II Trust Preferred Securities			
KCPL Financing III Trust Preferred Securities			
Kansas City Power & Light Company Guarantees with respect to Trust Preferred Securities of KCPL Financing II and KCPL Financing III(2)			
<b>Total</b>	<b>\$255,000,000</b>	<b>\$255,000,000</b>	<b>\$20,655</b>

1. There are being registered hereunder such presently indeterminate principal amount or number of Senior Debt Securities, Subordinated Debt Securities and Trust Preferred Securities with an aggregate initial offering price not to exceed \$255,000,000. Senior Debt Securities and Subordinated Debt Securities are collectively referred to as "Debt Securities." Debt Securities also may be issued to a trust in connection with the issuance and sale of Trust Preferred Securities and later distributed upon dissolution and distribution of the assets thereof, which would include such Debt Securities for which no separate consideration will be received. Pursuant to Rule 457(o) under the Securities Act of 1933, and General Instruction II.D. of Form S-3, which permits the registration fee to be calculated on the basis of the maximum aggregate offering price of all the securities listed, the table does not specify by each class information as to the amount to be registered, proposed maximum offering price per unit or proposed maximum aggregate offering price.
2. No separate consideration will be received for the Kansas City Power & Light Company Guarantees. Pursuant to Rule 457(n), no separate fee is payable in respect of the Kansas City Power & Light Company Guarantees.

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

[Subject to Completion, Dated August \_\_, 2003]

[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 is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.]

### PROSPECTUS

**\$255,000,000**

## KANSAS CITY POWER & LIGHT COMPANY

**Senior Debt Securities  
Subordinated Debt Securities**

**KCPL FINANCING II  
KCPL FINANCING III**

**Trust Preferred Securities and Related Guarantees fully and unconditionally guaranteed, as set forth herein, by  
Kansas City Power & Light Company**

Kansas City Power & Light Company (the "Company"), a wholly-owned subsidiary of Great Plains Energy Incorporated, and/or KCPL Financing II and KCPL Financing III may offer and sell up to \$255,000,000 of these securities. This prospectus provides you with a general description of these securities. We will provide the specific information about the offering and the terms of these securities in one or more supplements to this prospectus. The supplements may also add, update or change information contained in this prospectus. This prospectus may not be used to offer and sell our securities unless accompanied by a prospectus supplement. You should read this prospectus and the related supplement before you invest in these securities.

Our principal executive offices are located at 1201 Walnut, Kansas City, Missouri 64106-2124 and our telephone number is (816) 556-2200.

Please refer to "Risk Factors" beginning on page 1 of this document for a discussion of certain risks associated with the Company.

These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor have these organizations determined that this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

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## RISK FACTORS

You should carefully consider the risk factors described below, as well as the other information included or incorporated by reference in this prospectus, before making an investment in any of the securities being offered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known or that we currently believe to be immaterial may also adversely affect us.

**We are exposed to commodity price risk.** We engage in the wholesale and retail marketing of electricity and, accordingly, are exposed to risks associated with the price of electricity. In addition, we also purchase power as part of our load management operations. Further, since less than 1% of our revenues include an automatic fuel adjustment provision, we are exposed to risk from changes in the market prices of coal and natural gas used to generate power.

We manage one form of our exposure to commodity prices through the structure of our commercial contracts for purchase and delivery of coal, our predominant fuel source. About half of our delivered cost of coal is for rail transportation. We enter into long-term freight contracts to reduce the degree of variability in the delivered cost of coal. We also manage coal price risk in some cases by using short and intermediate-term fixed price contracts. We also manage commodity risk by establishing risk limits and entering into contracts to protect ourselves from volatility in the price of natural gas. However, we do not always hedge the entire exposure of our operations from commodity price volatility. To the extent that we do not do so or we are unsuccessful in doing so, our results of operations and financial position may be impacted as a result of changes in commodity prices.

**The costs of compliance with new environmental laws and the incurrence of environmental liabilities could adversely affect our profitability.** Our operations are subject to extensive regulation relating to environmental protection. New environmental laws and regulations affecting our operations may be adopted, and new interpretations of existing laws and regulations could be adopted or become applicable to us or our facilities, which may substantially increase our environmental expenditures in the future. In addition, we may not be able to recover all of our costs for environmental expenditures through rates at current levels in the future. Under current law, we are also generally responsible for any on-site liabilities associated with the environmental condition of our facilities that we have previously owned or operated, regardless of whether the liabilities arose before, during or after the time we owned or

operated the facilities. The incurrence of a material environmental liability could have a material adverse effect on our results of operations and financial condition.

**We have nuclear exposure.** We own 47% of Wolf Creek Nuclear Operating Corporation, the operating company for the Wolf Creek Generating Station (Wolf Creek) located in Coffey County, Kansas. Our share of Wolf Creek's generating capacity is 550 megawatts which makes it our second largest generating facility, representing approximately 15% of 2002 generating capacity and about 26% of annual MWh generation over the past three years. Over this same period, the facility has operated at 92% average capacity.

Wolf Creek has the lowest fuel cost per mmBtu of any of our generating units. Its assets represent about 33% of our assets and its operating expenses represent about 19% of our operating expenses. An extended shut-down of Wolf Creek could have a substantial adverse effect on our business, financial condition and results of operations because of higher replacement power and other costs. Although not expected, the Nuclear Regulatory

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Commission could impose an unscheduled plant shut-down, reacting to safety concerns at the plant or other similar nuclear units. If a long-term shut-down occurred, the state regulatory commissions could reduce rates by excluding the Wolf Creek investment from rate base.

Ownership and operation of a nuclear generating unit exposes us to risks regarding decommissioning costs at the end of the unit's life and to potential retrospective assessments and property losses in excess of insurance coverage. We contribute about \$3 million annually to a tax-qualified trust fund to be used to decommission Wolf Creek. This funding level assumes a projected level of return on trust assets. If the actual return on trust assets is below the anticipated level, we could be responsible for the balance of funds required. However, if returns are lower than the expected level, we believe a rate increase would be allowed to ensure full recovery of decommissioning costs over the remaining life of the unit.

#### **CAUTIONARY STATEMENTS REGARDING CERTAIN FORWARD-LOOKING INFORMATION**

Statements made in this prospectus that are not based on historical facts are forward-looking, may involve risks and uncertainties, and are intended to be as of the date when made. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, we are providing a number of important factors that could cause actual results to differ materially from provided forward-looking information. These important factors include:

- \* future economic conditions in the regional, national and international markets
- \* market perception of the energy industry and the Company
- \* changes in business strategy, operations, or development plans
- \* state and federal legislative and regulatory actions or developments, including deregulation, re-regulation and restructuring of the electric utility industry and constraints placed on the Company's actions by the Public Utility Holding Company Act of 1935
- \* adverse changes in applicable laws, regulations, rules, principles or practices governing tax, accounting and environmental matters including, but not limited to, air quality
- \* financial market conditions including, but not limited to, changes in interest rates and in availability and cost of capital
- \* ability to maintain current credit ratings
- \* inflation rates
- \* effectiveness of risk management policies and procedures and the ability of counterparties to satisfy their contractual commitments
- \* impact of terrorist acts
- \* increased competition including, but not limited to, retail choice in the electric utility industry and the entry of new competitors
- \* ability to carry out marketing and sales plans
- \* weather conditions including weather-related damage
- \* cost and availability of fuel

- \* ability to achieve generation planning goals and the occurrence of unplanned generation outages
- \* delays in the anticipated in-service dates of additional generating capacity
- nuclear operations
- \*
- \* performance of projects undertaken by our non-regulated businesses and the success of efforts to invest in and develop new opportunities, and
- \* other risks and uncertainties

This list of factors is not all-inclusive because it is not possible to predict all factors.

### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, and proxy statements and other information with the Securities and Exchange Commission (the "SEC") through the SEC's Electronic Data Gathering, Analysis and Retrieval system and these filings are publicly available through the SEC's website (<http://www.sec.gov>). You may read and copy such material at the public reference facilities maintained by the SEC at Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You may also obtain copies of such material at prescribed rates from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549.

The SEC allows us to "incorporate by reference" into this prospectus the information we file with them. This means that we can disclose important information to you by referring you to the documents containing the information. The information we incorporate by reference is considered to be included in and an important part of this prospectus and should be read with the same care. Information that we file later with the SEC that is incorporated by reference into this prospectus (but not information filed or furnished to the SEC and not deemed incorporated) will automatically update and supercede this information. We are incorporating by reference into this prospectus the following documents that we have filed with the SEC and any subsequent filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (excluding information deemed to be furnished and not filed with the SEC) until the offering of the securities described in this prospectus is completed:

- \* Our Annual Report on Form 10-K for the year ended December 31, 2002, which we refer to herein as the "2002 Form 10-K".
- \* Our Report on Form 8-K dated March 13, 2003.
- \* Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2003.
- \* Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2003.
- \* Our Reports on Form 8-K and Form 8-K/A dated August 14, 2003.

This prospectus is part of a registration statement we have filed with the SEC relating to our securities. As permitted by the SEC's rules, this prospectus does not contain all of the information included in the registration statement and the accompanying exhibits and schedules we file with the SEC. You should read the registration statement and the exhibits and schedules for more information about us and our securities. The registration statement, exhibits and schedules are also available at the SEC's Public Reference Section or through its website.

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You may obtain a free copy of our filings with the SEC by writing or telephoning us at the following address: Kansas City Power & Light Company, 1201 Walnut, Kansas City, Missouri 64106-2124 (Telephone No.: 816-556-2200) Attention: Corporate Secretary, or by contacting us on our website ([www.kcpl.com](http://www.kcpl.com)). Information on our website is not part of this prospectus.

No separate financial statements of any Trust are included in this prospectus. We believe that such statements would not be material to holders of the Preferred Securities because each Trust has no independent operations and exists for the sole purpose of investing the proceeds of the sale of its Trust Securities (as defined herein) in the subordinated debt securities.

### **ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement we have filed with the SEC using a "shelf" registration process. By using this process, we may offer, in one or more transactions

- \* senior debt securities
- \* subordinated debt securities

and KCPL Financing II and KCPL Financing III (individually, a "Trust" and collectively, the "Trusts") may offer

- \* trust preferred securities or capital securities (the "Preferred Securities")

in one or more offerings up to a total dollar amount of \$255,000,000. This prospectus provides you with a general description of the securities. Each time we offer securities, we will provide you with a supplement to this prospectus that will describe the specific terms of that offering. The prospectus supplement may also add, update or change the information contained in this prospectus. If there is any inconsistency between the information in this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement. The registration statement we filed with the SEC includes exhibits that provide more detail on descriptions of the matters discussed in this prospectus. Before you invest, you should carefully read this prospectus, the applicable prospectus supplement and the information contained in the documents we refer to in this prospectus under "Where You Can Find More Information."

References in this prospectus to the terms "we", "us" or other similar terms mean Kansas City Power & Light Company, unless the context clearly indicates otherwise. We are also referred to in this prospectus as "Kansas City Power & Light Company" and "the Company."

You should rely only on the information contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. We have not authorized anyone else to provide you with any different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer

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to sell securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus is current only as of the date of this prospectus.

## THE COMPANY

Kansas City Power & Light Company engages in the generation, transmission, distribution, and sale of electricity and serves approximately 485,000 customers located in all or portions of 24 counties in western Missouri and eastern Kansas. Our customers include over 425,000 residences, almost 55,000 commercial firms, and almost 2,500 industrials, municipalities, and other electric utilities. Retail electric revenues accounted for approximately 91% of our total operating revenues over the last three years. Wholesale firm power, bulk power sales and miscellaneous electric revenues accounted for the remainder of utility revenues. We are significantly impacted by seasonality, with approximately one-third of our revenues recorded in the third quarter. In addition to our utility business, we have a wholly owned unregulated subsidiary called Home Service Solutions Inc. ("HSS"), which, through its subsidiary, provides primarily energy-related residential services.

Through a corporate restructuring consummated on October 1, 2001, Great Plains Energy Incorporated, a Missouri corporation incorporated in 2001 ("Great Plains Energy"), became the parent company and sole owner of Kansas City Power & Light Company's common stock. The restructuring was implemented through an Agreement and Plan of Merger whereby each outstanding share of Kansas City Power & Light Company stock was exchanged for a share of Great Plains Energy stock. As a result, Great Plains Energy replaced Kansas City Power & Light Company as the listed entity on the New York Stock Exchange. Great Plains Energy is a public utility holding company registered with and subject, with its subsidiaries, including us, to regulation by the SEC under the Public Utility Holding Company Act of 1935, as amended. In connection with the reorganization, we transferred to Great Plains Energy our interest in two unregulated subsidiaries, Great Plains Power Incorporated and KLT Inc. For more details on the formation of the holding company and descriptions of the other Great Plains Energy subsidiaries, please refer to our 2002 Form 10-K, which is incorporated herein by reference. Our principal executive office is located at 1201 Walnut, Kansas City, Missouri 64106 (Telephone: (816) 556-2200).

## THE TRUSTS

Each Trust is a statutory business trust created under Delaware law pursuant to the filing of a certificate of trust with the Delaware Secretary of State on December 11, 1996. The business of each Trust is defined in a Declaration of Trust which will be amended and restated in its entirety by the Amended and Restated Declaration of Trust substantially in the form filed as an exhibit to the Registration Statement of which this prospectus forms a part (the "Trust Agreement"). Each Trust Agreement will be qualified as an indenture under the Trust Indenture Act of 1939, as amended (the "1939 Act"). The Company will own all the common securities (the "Common Securities" and, together with the Preferred Securities, the "Trust Securities") of each Trust. The Trust Securities represent undivided beneficial interests in the assets of the respective Trusts. Each Trust exists for the exclusive purposes of (i) issuing its

Trust Securities representing undivided beneficial interests in the assets of such Trust, (ii) investing the gross proceeds of the sale of its Trust Securities in a related series of subordinated debt securities, and (iii) engaging in

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only those other activities necessary or incidental to these purposes. The payment of periodic cash distributions on the Preferred Securities of each Trust and payments on liquidation and redemption with respect to the Preferred Securities of each Trust, in each case to the extent each Trust has funds available therefor, will be guaranteed by the Company (individually, a "Guarantee" and collectively, the "Guarantees") to the extent set forth under "Description of the Guarantees."

Each Trust's business and affairs will be conducted by its trustees, which shall be appointed by the Company as the holder of the Common Securities: two officers of the Company as Administrative Trustees; The Bank of New York as Property Trustee; and The Bank of New York as Delaware Trustee (collectively, the "Securities Trustees"). The Property Trustee of each Trust will act as the indenture trustee with respect to such Trust for purposes of compliance with the provisions of the 1939 Act.

The principal place of business of each Trust shall be c/o the Company, 1201 Walnut, Kansas City, Missouri 64106-2124, telephone (816) 556-2200, Attn: Corporate Secretary.

Reference is made to the prospectus supplement relating to the Preferred Securities of each Trust for further information concerning such Trust.

### **ACCOUNTING TREATMENT OF TRUSTS**

For financial reporting purposes, as currently treated, the Trusts will be treated as subsidiaries of the Company and, accordingly, the accounts of the Trusts will be included in the consolidated financial statements of the Company (see below for potential effects of the Financial Accounting Standards Board (FASB) Interpretation No. 46, "Consolidation of Variable Interest Entities"). If the Trusts are treated as subsidiaries of the Company, Statement of Financial Accounting Standards No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity", which is effective July 1, 2003, for the Company, will require that the Preferred Securities be presented as a separate line item in long-term debt in the consolidated statement of capitalization of the Company, and appropriate disclosures concerning the Preferred Securities, the Guarantees and the subordinated debt securities will be included in the notes to the consolidated financial statements. For financial reporting purposes, the Company will record distributions payable on the Preferred Securities as an expense.

In January 2003, the FASB issued Interpretation No. 46. The Interpretation clarifies the application of Accounting Research Bulletin (ARB) No. 51, "Consolidated Financial Statements", to certain entities in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties (Variable Interest Entities). FASB Interpretation No. 46 is effective July 1, 2003, for the Company. The Company is currently assessing the impact of FASB Interpretation No. 46 on Preferred Securities issued by a Trust. If, as a result of our assessment, we determine that under FASB Interpretation No. 46, the Company is not the primary beneficiary of the Trust, we would not be allowed to consolidate the Trust. This would result in the Company including its investment in the common stock of the Trust in its consolidated balance sheet. Additionally, the subordinated debt securities issued by the Company and

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held by the Trust would be presented as a separate line item in long-term debt in the consolidated statement of capitalization of the Company.

### **USE OF PROCEEDS**

Each Trust will invest the proceeds received from the sale of its Preferred Securities in the Company's subordinated debt securities. Unless we inform you otherwise in a supplement to this prospectus, we anticipate using any net proceeds received by us from the issuance of any debt securities for general corporate purposes, including, among others:

- \* Repayment of short term debt;
- \* Repurchase, retirement or refinancing of other debt securities, trust preferred securities or leases;
- \* Funding of construction expenditures; and
- \* Acquisitions.

### **RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for the periods indicated:

Six Months Ended June 30,	Year Ended December 31,				
<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>	<u>1999</u>	<u>1998</u>
2.49	2.88	2.22	3.02	2.38	2.98

Our ratio of earnings to fixed charges includes our consolidated subsidiary HSS. In addition, the above ratios include KLT Inc. and Great Plains Power Incorporated for all periods prior to the October 1, 2001 reorganization.

For purposes of computing the ratio of earnings to fixed charges, "earnings" consists of net income from continuing operations before cumulative effect of changes in accounting principles, losses from equity investments and minority interests in consolidated subsidiaries with fixed charges, plus interest charges (excluding the reduction for capitalized interest), income taxes, and the estimated interest components of rents. "Fixed charges" consist of interest charges (excluding the reduction for capitalized interest) and the estimated interest components of rents.

### DESCRIPTION OF DEBT SECURITIES

**General.** The senior debt securities and the subordinated debt securities, which we refer to collectively as the debt securities, will represent unsecured obligations of the Company. We may issue one or more series of debt securities directly to the public or to one or more Trusts. We expect that each series of senior debt securities or subordinated debt securities will be issued under a separate indenture, as each may be amended or supplemented from time to time. We will issue the senior debt securities in one or more series under a senior indenture that we will enter into with The Bank of New York, as trustee. We will issue the subordinated debt securities in one or more series under a

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subordinated indenture we will enter into with The Bank of New York, as trustee. The form of the senior indenture and the form of the subordinated indenture are filed as exhibits to the registration statement of which this prospectus is a part. Each indenture will be qualified under the Trust Indenture Act of 1939. The following summaries of certain provisions of the senior indenture, the subordinated indenture and the applicable debt securities do not purport to be complete and are subject to, and qualified in their entirety by, all of the provisions of the senior indenture, the subordinated indenture, including the definition of certain terms, and the applicable debt securities. You should carefully read the summary below and the provisions of the indentures that may be important to you before investing. Copies of the indentures will be available at the offices of the Trustee at 101 Barclay Street, 8<sup>th</sup> Floor West, New York, NY 10286.

We may authorize the issuance and provide for the terms of a series of debt securities as described in the indentures. There will be no requirement under either the senior indenture or the subordinated indenture that our future issuances of debt securities be issued exclusively under either indenture. We will be free to employ other indentures or documentation containing provisions different from those included in either indenture or applicable to one or more issuances of senior debt securities or subordinated debt securities, as the case may be, in connection with future issuances of other debt securities. The senior indenture and the subordinated indenture will provide that the applicable debt securities will be issued in one or more series, may be issued at various times, may have differing maturity dates and may bear interest at differing rates. We need not issue all debt securities of one series at the same time and, unless otherwise provided, we may reopen a series, without the consent of the holders of the senior debt securities or the subordinated debt securities of that series, as the case may be, for issuances of additional senior debt securities or subordinated debt securities of that series, as applicable. One or more series of the debt securities may be issued with the same or various maturities at par, above par or at a discount. Debt securities bearing no interest or interest at a rate which, at the time of issuance, is below the market rate ("Original Issue Discount Securities") will be sold at a discount (which may be substantial) below their stated principal amount. Federal income tax consequences and other special considerations applicable to any such Original Issue Discount Securities will be described in the prospectus supplement relating thereto. Unless otherwise described in the applicable prospectus supplement, neither indenture described above will limit the aggregate amount of debt, including secured debt, we or our subsidiaries may incur. There is no limitation of the amount of debt we may issue under the indentures. Both indentures will also permit us to merge or consolidate or to transfer or lease our assets, subject to certain conditions (see "Consolidation, Merger and Sale" below).

**Ranking.** The senior debt securities will be our direct unsecured general obligations and will rank equally with all of our other unsecured and unsubordinated debt. As of June 30, 2003, our aggregate outstanding debt that would have ranked equally with the senior debt securities was approximately \$821.5 million. The subordinated debt securities will be our direct unsecured general obligations and will be junior in right of payment to our Senior Indebtedness



Unless otherwise provided in a prospectus supplement, the debt securities will effectively rank junior to our first mortgage bonds ("General Mortgage Bonds") which were issued under the General Mortgage Indenture and Deed of Trust, dated as of December 1, 1986, between us and United Missouri Bank of Kansas City, N.A., as

supplemented ("Mortgage Indenture"). The Mortgage Indenture constitutes a first mortgage lien upon substantially all of our fixed property and franchises. At June 30, 2003, there was approximately \$213.8 million aggregate principal amount of General Mortgage Bonds outstanding. We have agreed with the issuer of certain bond insurance policies to not issue additional General Mortgage Bonds if, after giving effect to such additional General Mortgage Bonds, the proportion of secured debt to total indebtedness exceeded 75%. Additionally, if the long term rating for such General Mortgage Bonds by Standard & Poor's or Moody's Investors Service would be at or below A- or A3, respectively, such agreements would prohibit us from issuing additional General Mortgage Bonds if, after giving effect to such additional General Mortgage Bonds, the proportion of secured debt to total indebtedness exceeded 50%. At June 30, 2003, the proportion of secured debt to total indebtedness was approximately 21%.

**Provisions of a Particular Series.** The prospectus supplement applicable to each issuance of debt securities will specify, among other things:

- \* the title and any limitation on aggregate principal amount of the debt securities;
- \* the original issue date of the debt securities;
- \* the date or dates on which the principal of any of the debt securities is payable;
- \* the fixed or variable interest rate or rates, or method of calculation of such rate or rates, for the debt securities, and the date from which interest will accrue;
- \* the terms, if any, regarding the optional or mandatory redemption of any debt securities, including the redemption date or dates, if any, and the price or prices applicable to such redemption;
- \* the denominations in which such debt securities will be issuable;
- \* the period or periods within which, the price or prices at which and the terms and conditions upon which any debt securities may be repaid, in whole or in part, at the option of the holder thereof;
- \* the place or places where the principal of, and premium, if any, and interest, if any, on the debt securities shall be payable;
- \* the obligation, if any, of the Company to redeem, purchase, or repay the debt securities, including, but not limited to, pursuant to any sinking fund or analogous provision or at the option of a holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which the debt securities shall be redeemed, purchased, or repaid pursuant to such obligation;
- whether the debt securities are to be issued in whole or in part in the form
- \* form

of one of more global securities and, if so, the identity of the Depository for such global security or global securities;

- \* any addition, deletion or modification to the events of default applicable to that series of debt securities and the covenants for the benefit of the holders of that series;
- \* any remarketing features of the debt securities;
- \* any collateral, security, assurance, or guarantee for the debt security;
- \* if other than the principal amount thereof, the portion of the principal amount of the debt securities payable upon declaration of acceleration of the maturity of the debt securities;
- \* the securities exchange(s), if any, on which the debt securities will be listed;
- \* the terms, if any, pursuant to which debt securities may be converted into or exchanged for shares of our capital stock or other securities;
- \* any interest deferral or extension provisions;
- \* the applicability of or any change in the subordination provisions for a series of debt securities;
- \* the terms of any warrants we may issue to purchase debt securities;  
and
- \* any other terms of the debt securities not inconsistent with the provisions of the applicable indenture.

The terms of any subordinated debt securities issued to a Trust will correspond to those of the related Preferred Securities of such Trust as described in the prospectus supplement relating to such Preferred Securities.

**Subordination.** The subordinated debt securities will be subordinate and junior in right of payment to all of our Senior Indebtedness, as defined below.

In the event (a) of any insolvency or bankruptcy proceeding or any receivership, liquidation, reorganization or other similar proceedings in respect of the Company or a substantial part of its property or of any proceedings for liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy, or (b) subject to the terms of the subordinated indenture, that a default shall have occurred with respect to the payment of principal or interest on any Senior Indebtedness, and such default shall have continued beyond the period of grace and shall not have been cured, waived or ceased to exist, or (c) that the principal of and accrued interest on the subordinated debt securities of any series shall have been declared due and

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payable and such declaration shall not have been rescinded or annulled, then all Senior Indebtedness must be paid in full before the holders of the subordinated debt securities are entitled to receive any payment.

The rights of the holders of the subordinated debt securities will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions applicable to Senior Indebtedness until all amounts owing

on the subordinated debt securities are paid in full. If provided in the applicable prospectus supplement, limited subordination periods may apply in the event of non-payment defaults relating to Senior Indebtedness in situations where there has not been an acceleration of Senior Indebtedness.

As defined in the subordinated indenture, the term "Senior Indebtedness" means:

- \* obligations (other than non-recourse obligations, the indebtedness issued under the subordinated indenture and other indebtedness which is either effectively by its terms or expressly made subordinate to or pari passu with the subordinated debt securities) of, or guaranteed (except to the extent our payment obligations under any such guarantee are subordinate to or pari passu with the subordinated debt securities) or assumed by, us for
  - borrowed money, including both senior and subordinated indebtedness for borrowed money (other than the subordinated debt securities or other indebtedness which is expressly made subordinate to or pari passu with the subordinated debt securities); or
  - the payment of money relating to any lease which is capitalized on our balance sheet in accordance with generally accepted accounting principles as in effect from time to time; or
  
- \* indebtedness evidenced by bonds, debentures, notes or other similar instruments, and

in each case, amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligations with Senior Indebtedness, whether existing as of the date of the subordinated indenture or subsequently incurred by us.

The subordinated indenture will not limit the aggregate amount of Senior Indebtedness that we may issue. As of June 30, 2003, our outstanding Senior Indebtedness totaled approximately \$1,035.3 million.

**Certain Covenants.** We will covenant in the subordinated indenture, for the benefit of the holders of each series of subordinated debt securities, that, (i) if at such time we shall have given notice of our election to extend an interest payment period for such series of subordinated debt securities and such extension shall be continuing, (ii) if at such time we shall be in default with respect to our payment or other obligations under the

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Guarantee with respect to the Trust Securities, if any, related to such series of subordinated debt securities, or (iii) if at such time an Event of Default under the subordinated indenture with respect to such series of subordinated debt securities shall have occurred and be continuing, (a) we shall not declare or pay any dividend or make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of our capital stock, (b) we shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees other than the Guarantees) issued by us which rank equally with or junior to the subordinated debt securities, and (c) we shall not make guarantee payments with respect to the foregoing (other than pursuant to the Guarantees). None of the foregoing, however, shall restrict (i) any of the actions described in the preceding sentence resulting from a ny reclassification of our capital stock or the exchange or conversion of one class or series of our capital stock for another class or series of our capital stock; (ii) the purchase of fractional interests in shares of our capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged; or (iii) purchases or acquisitions of shares of Company common stock in connection with any employee benefit plans, any employee contracts or other similar arrangements with or for the benefit of any one or more employees, officers, directors or consultants or in connection with a dividend reinvestment or shareholders' stock purchase plan.

The subordinated indenture further will provide that, for so long as the Trust Securities of any Trust remain outstanding, we covenant (i) to directly or indirectly maintain 100% ownership of the Common Securities of such Trust; provided, however, that any permitted successor of us under the subordinated indenture may succeed to our ownership of such Common Securities; (ii) to not cause, as sponsor of such Trust, or permit, as holder of Common Securities of such Trust, the dissolution, winding-up, or termination of such Trust, except in connection with a distribution of subordinated debt securities as provided in the Trust Agreement and in connection with certain mergers, consolidations or amalgamations permitted by the Trust Agreement; and (iii) to use reasonable efforts to cause such Trust (a) to

remain a statutory business trust, except in connection with the distribution of subordinated debt securities to the holders of Trust Securities in liquidation of such Trust, the redemption of all of the Trust Securities of such Trust, or certain mergers, consolidations or amalgamations, each as permitted by the related Trust Agreement, and (b) to otherwise continue to be classified as a grantor trust for United States federal income tax purposes.

**Registration, Transfer and Exchange.** Unless otherwise indicated in the applicable prospectus supplement, each series of debt securities, other than debt securities issued to a Trust, will initially be issued in the form of one or more global securities, in registered form, without coupons, as described under "Book-Entry System." The global securities will be registered in the name of a depository, or its nominee, and deposited with, or on behalf of, the depository. Except in the circumstances described under "Book-Entry System," owners of beneficial interests in a global security will not be entitled to have debt securities registered in their names, will not receive or be entitled to receive physical delivery of any debt securities and will not be considered the registered holders thereof under the applicable indenture.

Debt securities of any series will be exchangeable for other debt securities of the same series of any authorized denominations and of a like aggregate principal amount

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and tenor. Subject to the terms of the applicable indenture and the limitations applicable to global securities, debt securities may be presented for exchange or registration of transfer--duly endorsed or accompanied by a duly executed instrument of transfer--at the office of any transfer agent we may designate for such purpose, without service charge but upon payment of any taxes and other governmental charges, and upon satisfaction of such other reasonable requirements as are described in the applicable indenture.

Unless otherwise indicated in the applicable prospectus supplement, the transfer agent will be the trustee under the applicable indenture. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

**Payment and Paying Agents.** Principal of and interest and premium, if any, on debt securities issued in the form of global securities will be paid in the manner described under "Book-Entry System."

Unless otherwise indicated in the applicable prospectus supplement, the principal of and any premium and interest on debt securities of a particular series in the form of certificated securities will be payable at the office of the applicable trustee or at the authorized office of any paying agent or paying agents upon presentation and surrender of such debt securities. We may at any time designate additional paying agents or rescind the designation of any paying agent or approve a change in the office through which any paying agent acts, except that we will be required to maintain a paying agent in each place of payment for the debt securities of a particular series. Unless otherwise indicated in the applicable prospectus supplement, interest on the debt securities of a particular series, other than interest at maturity, that are in the form of certificated securities will be paid by check payable in clearinghouse funds mailed to the person entitled thereto at such person's address as it appears on the register for such debt securities maintained by the applicable trustee. All monies we pay to a trustee or a paying agent for the payment of the principal of, and premium or interest, if any, on, any debt security which remain unclaimed at the end of two years after such principal, premium or interest shall have become due and payable will be repaid to us, and the holder of such debt security thereafter may look only to us for payment thereof. However, any such payment shall be subject to escheat pursuant to state abandoned property laws.

**Redemption.** Any terms for the optional or mandatory redemption of the debt securities will be set forth in the applicable prospectus supplement. Unless otherwise indicated in the applicable prospectus supplement, debt securities will be redeemable by us only upon notice by mail not less than 30 nor more than 60 days prior to the date fixed for redemption, and, if less than all the debt securities of a series are to be redeemed, the particular debt securities to be redeemed will be selected by such method as shall be provided for any particular series, or in the absence of any such provision, by the trustee in such manner as it shall deem fair and appropriate.

Any notice of redemption at our option may state that such redemption will be conditional upon receipt by the trustee or the paying agent or agents, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any,

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and interest on, such debt securities and that if such money has not been so received, such notice will be of no force and effect and we will not be required to redeem such debt securities.

**Consolidation, Merger and Sale or Disposition of Assets.** We may, without the consent of the holders of any debt securities, consolidate with or merge into any other corporation or sell, transfer, lease or otherwise dispose of our properties as or substantially as an entirety to any person, provided that:

- \* the successor or transferee corporation or the person which receives such properties pursuant to such sale, transfer, lease or other disposition

is a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia;

- \* the successor or transferee corporation or the person which receives such properties pursuant to such sale, transfer, lease or other disposition assumes by supplemental indenture the due and punctual payment of the principal of and premium and interest, if any, on all the debt securities outstanding under each indenture and the performance of every covenant of each indenture to be performed or observed by us;
- \* we have delivered to the trustees for such debt securities an officer's certificate and an opinion of counsel as will be provided in each of the indentures; and
- \* immediately after giving effect to the transaction, no Event of Default (see "Events of Default") or event that, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

Upon any such consolidation, merger, sale, transfer, lease or other disposition of our properties as or substantially as an entirety, the successor corporation formed by such consolidation or into which we are merged or the person to which such sale, transfer, lease or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, us under the applicable indenture with the same effect as if such successor corporation or person had been named as us therein, and we will be released from all obligations under the applicable indenture.

Certain of the indentures for our debt securities provide that the sale, conveyance or other transfer by the Company of its facilities for the generation of electric energy to any affiliate of the Company, shall not be subject to other restrictions on sales, conveyances, or other transfers provided that the facilities shall not in the aggregate represent assets with a depreciated value on the books of the Company in excess of 65% of the depreciated value of the Company's total assets as set forth in its most recent report filed on Form 10-K or 10-Q as of the date of the sale, conveyance, or other transfer.

**Modification.** Without the consent of any holder of debt securities, the trustee for such debt securities and we may enter into one or more supplemental indentures for any of the following purposes:

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- \* to supply omissions, cure any ambiguity or inconsistency or correct defects, which actions, in each case, are not prejudicial to the interests of the holders of debt securities of any series in any material respect;
  - \* to change or eliminate any provision of the applicable indenture, provided that any such change or elimination will become effective with respect to such series only when there is no debt security of such series outstanding created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision, or such change or elimination is applicable only to debt securities of such series issued after the effective date of such change or elimination;
  - \* to establish the form or terms of debt securities of any series as permitted by the applicable indenture;
  - \* to evidence the assumption of our covenants in the applicable indenture and the debt securities by any permitted successor;

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to grant to or confer upon the trustee for any debt securities for the benefit of the holders of such debt securities, any additional rights, remedies, powers or authority;

- \* to permit the trustee for any debt securities to comply with any duties imposed upon it by law;
- \* to specify further the duties and responsibilities of, and to define further the relationship among, the trustee for any debt securities, any authenticating agent and any paying agent, and to evidence the succession of a successor trustee as permitted under the applicable indenture;
- \* to add to our covenants for the benefit of the holders of all or any series of outstanding debt securities, to add to the security of all debt securities, to surrender any right or power conferred upon us by the applicable indenture or to add any additional events of default with respect to all or any series of outstanding debt securities; and
- \* to make any other change that is not prejudicial to the holders of any debt securities.

Except as provided above, the consent of the holders of a majority in aggregate principal amount of either the senior debt securities or the subordinated debt securities, as the case may be, of all series then outstanding, considered as one class, is required for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of, the applicable indenture pursuant to one or more supplemental indentures or of modifying or waiving in any manner the rights of the holders of the applicable debt securities; provided, however, that if less than all of the series of senior debt securities or subordinated debt securities outstanding, as the case may be, are directly affected by a proposed supplemental indenture, then the consent only of the holders

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of a majority in aggregate principal amount of the outstanding applicable debt securities of all series so directly affected, considered as one class, will be required.

Notwithstanding the foregoing, no such amendment or modification may, without the consent of each holder of outstanding debt securities affected thereby:

- \* change the maturity date of the principal of any debt security;
- \* reduce the principal amount of, or premium payable on, any debt security;
- \* reduce the rate of interest or change the method of calculating such rate, or extend the time of payment of interest, on any debt security;
- \* change the coin or currency of any payment of principal of, or any premium or interest on any debt security;
- \* change the date on which any debt security may be redeemed or adversely affect the rights of a holder to institute suit for the enforcement of any payment of principal of or any premium or interest on any debt security; or
- \* modify the foregoing requirements or reduce the percentage of

outstanding debt securities necessary to modify or amend the applicable indenture or to waive any past default.

A supplemental indenture which changes or eliminates any covenant or other provision of the applicable indenture which has expressly been included solely for the benefit of one or more series of debt securities, or which modifies the rights of the holders of debt securities of such series with respect to such covenant or provision, will be deemed not to affect the rights under the applicable indenture of the holders of the debt securities of any other series.

**Events of Default.** Unless specifically deleted in a supplemental indenture or Board resolution under which a series of debt securities is issued, or modified in any such supplemental indenture, each of the following will constitute an event of default under the senior indenture or the subordinated indenture with respect to senior debt securities or subordinated debt securities, as the case may be, of any series:

- \* failure to pay principal of or premium, if any, on any debt security of such series, as the case may be, within one day after the same becomes due and payable;

- failure to pay interest on the debt securities of such series within 30 days
- \* after the same becomes due and payable; provided, however, that a valid extension of the interest payment period or deferral of interest payment by us as contemplated in the subordinated indenture shall not constitute a failure to pay interest for this purpose; and provided, further, that with respect to subordinated debt securities, no such default shall be deemed to exist if, on or prior to the date on which such interest became due, we shall

have made a payment sufficient to pay such interest pursuant to the Guarantee related to the Trust Securities of the Trust owning the subordinated debt securities, and shall have delivered a notice to the Trustee to that effect;

- \* failure to perform or breach of any of our other covenants or warranties in the applicable indenture (other than a covenant or warranty solely for the benefit of one or more series of debt securities other than such series) for 60 days after written notice to us by the trustee or to us and the trustee by the holders of at least 33% in aggregate principal amount of the outstanding applicable debt securities of such series;

- \* certain events of bankruptcy, insolvency, reorganization, assignment or receivership; or

- \* any other event of default specified in the applicable prospectus supplement with respect to debt securities of a particular series.

No event of default with respect to the debt securities of a particular series necessarily constitutes an event of default with respect to the debt securities of any other series issued under the applicable indenture.

If an event of default with respect to any series of debt securities occurs and is continuing, then either the trustee for such series or the holders of a majority in aggregate principal amount of the outstanding debt securities of such series, by notice in writing, may declare the principal amount of and interest on all of the debt securities of such series to be due and payable immediately; provided, however, that if an event of default occurs and is continuing with respect to more than one series of debt securities under a particular indenture, the trustee for such series or the holders of a majority in aggregate principal amount of the outstanding debt securities of all such series, considered as one class, may make such declaration of acceleration and not the holders of the debt securities of any one of such series.

At any time after an acceleration with respect to the debt securities of any series has been declared, but before a judgment or decree for the payment of the money due has been obtained, the event or events of default giving

rise to such acceleration will be waived, and the acceleration will be rescinded and annulled, if

- \* we pay or deposit with the trustee for such series a sum sufficient to pay all matured installments of interest on all debt securities of such series, the principal of and premium, if any, on the debt securities of such series which have become due otherwise than by acceleration and interest thereon at the rate or rates specified in such debt securities, interest upon overdue installments of interest at the rate or rates specified in such debt securities, to the extent that payment of such interest is lawful, and all amounts due to the trustee for such series under the applicable indenture; and
  
- any other event or events of default with respect to the debt securities of
- \* such series, other than the nonpayment of the principal of and accrued

interest on the debt securities of such series which has become due solely by such acceleration, have been cured or waived as provided in the applicable indenture.

However, no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or impair any related right.

Subject to the provisions of the applicable indenture relating to the duties of the trustee in case an event of default shall occur and be continuing, the trustee generally will be under no obligation to exercise any of its rights or powers under the applicable indenture at the request or direction of any of the holders unless such holders have offered to the trustee reasonable security or indemnity satisfactory to it. Subject to such provisions for the indemnification of the trustee and certain other limitations contained in the applicable indenture, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or of exercising any trust or power conferred on the trustee, with respect to the debt securities of that series; provided, however, that if an event of default occurs and is continuing with respect to more than one series of debt securities, the holders of a majority in aggregate principal amount of the outstanding debt securities of all those series, considered as one class, will have the right to make such direction, and not the holders of the debt securities of any one series. Any direction provided by the holders shall not be in conflict with any rule of law or with the senior indenture or the subordinated indenture, as the case may be, and will not involve the trustee in personal liability in circumstances where reasonable indemnity would not, in the trustee's sole discretion, be adequate and the trustee may take any other action it deems proper that is not inconsistent with such direction.

The holders of a majority in aggregate principal amount of the outstanding debt securities of any series may waive any past default under the applicable indenture on behalf of all holders of debt securities of that series with respect to the debt securities of that series, except a default in the payment of principal of or any premium or interest on such debt securities. No holder of debt securities of any series may institute any proceeding with respect to the applicable indenture, or for the appointment of a receiver or a trustee, or for any other remedy, unless such holder has previously given to the trustee for such series written notice of a continuing event of default with respect to the debt securities of such series, the holders of a majority in aggregate principal amount of the outstanding debt securities of all series in respect of which an event of default has occurred and is continuing, considered as one class, have made written request to the trustee for such series to institute such proceeding and have offered reasonable indemnity, and the trustee for such series has failed to institute such proceeding within 60 days after such notice, request and offer. Furthermore, no holder of debt securities of any series will be entitled to institute any such action if and to the extent that such action would disturb or prejudice the rights of other holders of those debt securities.

Notwithstanding the foregoing, each holder of debt securities of any series has the right, which is absolute and unconditional, to receive payment of the principal of and premium and interest, if any, on such debt securities when due and to institute suit for the enforcement of any such payment, and such rights may not be impaired without the consent of that holder of debt securities.

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The trustee, within 90 days after it receives notice of the occurrence of a default with respect to the debt securities of any series, is required to give the holders of the debt securities of that series notice of such default, unless cured or waived, but, except in the case of default in the payment of principal of, or premium, if any, or interest on, the debt securities of that series, the trustee may withhold such notice if it determines in good faith that it is in the interest of such holders to do so. We will be required to deliver to the trustees for the debt securities each year a certificate as to



whether or not, to the knowledge of the officers signing such certificate, we are in compliance with all conditions and covenants under the applicable indenture, determined without regard to any period of grace or requirement of notice under such indenture.

**Defeasance and Discharge.** Unless the applicable prospectus supplement states otherwise, we may elect either:

1. to defease and be discharged from any and all obligations in respect of the debt securities of any series then outstanding under the applicable indenture (except for certain obligations to register the transfer or exchange of the debt securities of such series, replace stolen, lost or mutilated notes, maintain paying agencies and hold monies for payment in trust); or
2. to be released from the obligations of the senior indenture with respect to the senior debt securities of any series or the subordinated indenture with respect to the subordinated debt securities of any series under any covenants applicable to the debt securities of such series which are subject to covenant defeasance as described in the indenture, supplemental indenture or other instrument establishing such series.

In the case of either (1) or (2), we are required to deposit, in trust, with the applicable trustee money or U.S. government obligations, which through the payment of interest on those obligations and principal of those obligations in accordance with their terms will provide money, in an amount sufficient, without reinvestment, to pay all the principal of, premium, if any, and interest on the debt securities of such series on the dates payments are due (which may include one or more redemption dates designated by us). This trust may only be established if, among other things, (A) no event of default or event which with the giving of notice or lapse of time, or both, would become an event of default under the applicable indenture has occurred and is continuing on the date of the deposit, and 91 days have passed after the deposit has been made and, during that period, certain events of default have not occurred and are continuing as of the end of that period, (B) the deposit will not cause the trustee to have any conflicting interest with respect to our other securities and (C) we have delivered an opinion of counsel to the effect that the holders will not recognize income, gain or loss for federal income tax purposes (and, in the case of paragraph (1) above, such opinion of counsel is based on a ruling of the Internal Revenue Service or other change in applicable federal income tax law) as a result of the deposit or defeasance and will be subject to federal income tax in the same amounts, in the same manner and at the same times as if the deposit and defeasance had not occurred.

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We may exercise our defeasance option under paragraph (1) with respect to debt securities of any series notwithstanding our prior exercise of our covenant defeasance option under paragraph (2). If we exercise our defeasance option for debt securities of any series, payment of the debt securities of such series may not be accelerated because of a subsequent event of default. If we exercise our covenant defeasance option for debt securities of any series, payment of the debt securities of such series may not be accelerated by reference to a subsequent breach of any of the covenants noted under clause (2) in the preceding paragraph. In the event we fail to comply with our remaining obligations with respect to the debt securities of any series under the applicable indenture after exercising our covenant defeasance option and the debt securities of such series are declared due and payable because of the subsequent occurrence of any event of default, the amount of money and U.S. government obligations on deposit with the trustee may be insufficient to pay amounts due on the debt securities of such series at the time of the acceleration resulting from that event of default. However, we will remain liable for those payments.

**Resignation or Removal of Trustee.** The trustee may resign at any time upon written notice to us specifying the day upon which the resignation is to take effect and such resignation will take effect immediately upon the later of the appointment of a successor trustee and such specified day. The trustee may be removed at any time with respect to debt securities of any series by an instrument or concurrent instruments in writing filed with the trustee and signed by the holders, or their attorneys-in-fact, of a majority in aggregate principal amount of that series of debt securities then outstanding. In addition, so long as no event of default or event which, with the giving of notice or lapse of time or both, would become an event of default has occurred and is continuing, we may remove the trustee upon notice to the holder of each debt security outstanding and the trustee, and appoint a successor trustee.

**Concerning the Trustee.** As of June 30, 2003, The Bank of New York, which will be the Senior Indenture Trustee, the Subordinated Indenture Trustee, the Senior Property Trustee and the Guarantee Trustee, was the trustee for \$ 991.9 million of the Company's secured and unsecured debt under seven separate indentures. The Bank of New York is also a depository for funds and performs other services for, and transacts other banking business with our affiliates and us in the normal course and may do so in the future. Each indenture will provide that our obligations to

compensate the trustee and reimburse the trustee for expenses, disbursements and advances will be secured by a lien prior to that of the applicable debt securities upon the property and funds held or collected by the trustee as such.

**Governing Law.** The senior indenture, the subordinated indenture and the related debt securities will be governed by New York law.

## DESCRIPTION OF THE PREFERRED SECURITIES

Each Trust may issue only one series of Preferred Securities having terms described in the prospectus supplement relating thereto. The Trust Agreement of each Trust will authorize the Administrative Trustees, on behalf of the Trust, to issue the Preferred Securities of such Trust. The Preferred Securities of each Trust will have such terms, including distributions, redemption, voting, liquidation rights and such other preferred,

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deferral or other special rights or such restrictions as shall be set forth in the Trust Agreement of such Trust. Reference is made to the prospectus supplement relating to the Preferred Securities of a Trust for specific terms, including:

- \* the distinctive designation of such Preferred Securities;
- \* the number of Preferred Securities issued by such Trust;
- \* the annual distribution rate (or method of determining such rate) for Preferred Securities of such Trust and the date or dates on which such distributions shall be payable;
- \* whether distributions on such Preferred Securities shall be cumulative and, in the case of Preferred Securities having cumulative distribution rights, the date or dates, or method of determining the date or dates, from which distributions on such Preferred Securities shall be cumulative;
- \* the amount or amounts that shall be paid out of the assets of such Trust to the holders of the Preferred Securities of such Trust upon voluntary or involuntary dissolution, winding-up or termination of such Trust;
- \* the obligation, if any, of such Trust to purchase or redeem such Preferred Securities and the price or prices at which, the period or periods within which, and the terms and conditions upon which such Preferred Securities shall be purchased or redeemed, in whole or in part, pursuant to such obligation;
- \* the voting rights, if any, of such Preferred Securities in addition to those required by law, including the number of votes per Preferred Security and any requirement for the approval by the holders of Preferred Securities as a condition to specified action or amendments to the Trust Agreement of such Trust;
- \* the rights, if any, to defer distributions on the Preferred Securities by extending the interest payment period on the related subordinated debt securities; and
- \* any other relative rights, preferences, privileges, limitations or restrictions of such Preferred Securities not inconsistent with the Trust Agreement of such Trust or applicable law.

All Preferred Securities offered hereby will be guaranteed by the Company to the extent set forth under "Description of the Guarantees." Any material United States federal income tax considerations applicable to an offering of Preferred Securities will be described in the prospectus supplement relating thereto.

## DESCRIPTION OF THE RELATED GUARANTEES

Set forth below is a summary of information concerning the Guarantees that will be executed and delivered by the Company for the benefit of the holders of Preferred Securities of the respective Trusts from time to time. Each Guarantee will be qualified as an indenture under the 1939 Act. The Bank of New York will act as trustee under each Guarantee (the "Guarantee Trustee") for purposes of the 1939 Act. The terms of the respective Guarantees will be those set forth therein and those made part thereof by the 1939 Act. The following summary does not purport to be complete and is subject in all respects to the provisions of, and is qualified in its entirety by reference to, the Guarantees, the form of which is filed as an exhibit to the Registration Statement of which this prospectus forms a part, and the 1939 Act. Each Guarantee will be held by the Guarantee Trustee for the benefit of holders of the Preferred Securities to which it relates.

**General.** Pursuant to each Guarantee, the Company will irrevocably and unconditionally agree, to the extent set forth therein, to pay in full, to the holders of the related Preferred Securities, the Guarantee Payments (as defined herein), to the extent not paid by, or on behalf of, the related Trust, as and when due, regardless of any defense, right of set-off or counterclaim that the Company may have or assert against any person. The following payments or distributions with respect to the Preferred Securities of any Trust to the extent not paid or made by, or on behalf of, such Trust will be subject to the Guarantee related thereto (without duplication):

- \* any accrued and unpaid distributions required to be paid on the Preferred Securities of such Trust but if and only if and to the extent that such Trust has funds available therefor;
- \* the redemption price, including all accrued and unpaid distributions to the date of redemption (the "Redemption Price"), with respect to any Preferred Securities called for redemption by such Trust, but if and only to the extent such Trust has funds available therefor; and
- \* upon a dissolution, winding-up or termination of such Trust (other than in connection with the distribution of subordinated debt securities to the holders of Trust Securities of such Trust or the redemption of all of the Preferred Securities of such Trust), the lesser of
  - the aggregate of the liquidation amount and all accrued and unpaid distributions on the Preferred Securities of such Trust to the date of payment, to the extent such Trust has funds available therefore; and
  - the amount of assets of such Trust remaining available for distribution to holders of Preferred Securities of such Trust in liquidation of such Trust

(the "Guarantee Payments").

The Company's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Company to the holders of the related Preferred Securities or by causing the related Trust to pay such amounts to such holders.

Each Guarantee will be a guarantee of the Guarantee Payments with respect to the related Preferred Securities from the time of issuance of such Preferred Securities, but will not apply to the payment of distributions and other payments on such Preferred Securities when the related Trust does not have sufficient funds available to make such distributions or other payments. **If the Company does not make interest payments on the subordinated debt**

**securities held by the Property Trustee under any Trust, such Trust will not make distributions on its Preferred Securities.**

**Subordination.** The Company's obligations under each Guarantee to make the Guarantee Payments will constitute an unsecured obligation of the Company and will rank:

- \* subordinate and junior in right of payment to all other liabilities of the Company, including the subordinated debt securities, except those liabilities of the Company made pari passu or subordinate by their terms,
- \* pari passu with the most senior preferred stock now or hereafter issued by the Company and with any guarantee now or hereafter entered into by the Company in respect of any preferred securities of any affiliate of the Company, and
- \* senior to all common stock of the Company.

The terms of the Preferred Securities will provide that each holder of Preferred Securities by acceptance thereof agrees to the subordination provisions and other terms of the Guarantee related thereto. The Company has outstanding common stock that ranks junior to the Guarantees.

Each Guarantee will constitute a guarantee of payment and not of collection (that is, the guaranteed party may institute a legal proceeding directly against the guarantor to enforce its rights under the guarantee without first instituting a legal proceeding against any other person or entity).

**Amendments and Assignment.** Except with respect to any changes that do not materially and adversely affect the rights of holders of the related Preferred Securities (in which case no consent will be required), each Guarantee may be amended only with the prior approval of the holders of not less than 66 2/3% in liquidation amount of all of such outstanding Preferred Securities. The manner of obtaining any such approval of holders of the Preferred Securities will be as set forth in an accompanying prospectus supplement. All guarantees and agreements contained in each Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Company and shall inure to the benefit of the holders of the related Preferred Securities then outstanding.

**Termination.** Each Guarantee will terminate and be of no further force and effect as to the related Preferred Securities upon full payment of the Redemption Price of all

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such Preferred Securities, upon distribution of subordinated debt securities to the holders of such Preferred Securities in exchange for all such Preferred Securities, or upon full payment of the amounts payable upon liquidation of the related Trust. Each Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of the related Preferred Securities must restore payment of any sums paid with respect to such Preferred Securities or under such Guarantee.

**Events of Default.** An event of default under each Guarantee will occur upon the failure by the Company to perform any of its payment or other obligations thereunder. The holders of a majority in liquidation amount of the Preferred Securities to which any Guarantee relates 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 such Guarantee or exercising any trust or power conferred upon the Guarantee Trustee under such Guarantee. Any holder of the related Preferred Securities may institute a legal proceeding directly against the Company to enforce its rights under such Guarantee without first instituting a legal proceeding against or requesting or directing that action be taken by the Guarantee Trustee or any other person. The holders of a majority in liquidation amount of Preferred Securities of any series may, by vote, on behalf of the holders of all the Preferred Securities of such series, waive any past event of default and its consequences.

**Information Concerning the Guarantee Trustee.** The Guarantee Trustee, prior to the occurrence of any event of default with respect to any Guarantee and after the curing or waiving of all events of default with respect to such Guarantee, will undertake to perform only such duties as are specifically set forth in such Guarantee and, in case an event of default has occurred (that has not been cured or waived), the Guarantee Trustee shall exercise such of the rights and powers vested in it by such Guarantee and use the same degree of care and skill as a prudent individual would exercise or use in the conduct of his or her own affairs. Subject to such provisions, the Guarantee Trustee is under no obligation to exercise any of the rights or powers vested in it by any Guarantee at the request or direction of any holder of the related Preferred Securities, unless offered reasonable indemnity against the costs, expenses and liabilities which might be incurred thereby.

The Bank of New York, the Guarantee Trustee, also serves as Property Trustee, the Senior Indenture Trustee, and the Subordinated Indenture Trustee.

**Governing Law.** Each Guarantee will be governed by, and construed in accordance with, the internal laws of the State of New York.

**The Agreements as to Expenses and Liabilities.** Pursuant to an Agreement as to Expenses and Liabilities to be entered into by the Company under each Trust Agreement, the Company will irrevocably and unconditionally guarantee to each person or entity to whom each Trust becomes indebted or liable the full payment of any indebtedness, expenses or liabilities of such Trust, other than obligations of such Trust to pay to the holders of the related Preferred Securities or other similar interests in such Trust the amounts due such holders pursuant to the terms of such Preferred Securities or such other similar interests, as the case may be.

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#### **RELATIONSHIP AMONG THE PREFERRED SECURITIES, THE SUBORDINATED DEBT SECURITIES AND THE GUARANTEES**

As long as payments of interest and other payments are made when due on each series of subordinated debt securities issued to a Trust, such payments will be sufficient to cover distributions and payments due on the related Trust Securities of such Trust primarily because (i) the aggregate principal amount of each series of subordinated debt securities will be at least equal to the sum of the aggregate stated liquidation amount of the related Trust Securities; (ii) the interest rate and interest and other payment dates on each series of subordinated debt securities will match the distribution rate and distribution and other payment dates for the related Preferred Securities; (iii) the Company shall pay for all costs and expenses of each Trust pursuant to the Agreements as to Expenses and Liabilities; and (iv) each Trust Agreement provides that the Securities Trustees under each Trust Agreement shall not cause or permit the Trust to, among other things, engage in any activity that is not consistent with the purposes of the Trust.

Payments of distributions (to the extent funds for such purpose are available) and other payments due on the Preferred Securities (to the extent funds for such purpose are legally and immediately available) will be guaranteed by the Company as and to the extent set forth under "Description of the Guarantees." If the Company does not make interest payments on any series of subordinated debt securities, it is not expected that the related Trust will have sufficient funds to pay distributions on its Preferred Securities. Each Guarantee is a guarantee from the time of its issuance, but does not apply to any payment of distributions unless and until the related Trust has sufficient funds available for the payment of such distributions.

If the Company fails to make interest or other payments on any series of subordinated debt securities when due (taking into account any extension period as described in the applicable prospectus supplement), the holders of the related Preferred Securities may rely on the enforcement by the Property Trustee as a holder of subordinated debt securities against the Company. Such holders may direct the Property Trustee to enforce its rights under the subordinated debt securities of such series, including proceeding directly against the Company to enforce such subordinated debt securities. If the Property Trustee fails to enforce its rights under any series of subordinated debt securities, to the fullest extent permitted by applicable law, any holder of related Preferred Securities may institute a legal proceeding directly against the Company to enforce the Property Trustee's rights under such series of subordinated debt securities without first instituting any legal proceeding against the Property Trustee or any other person or entity. Notwithstanding the foregoing, a holder of Preferred Securities may institute a legal proceeding directly against the Company, without first instituting a legal proceeding against the Property Trustee or any other person or entity, for enforcement of payment to such holder of principal of or interest on subordinated debt securities of the related series having a principal amount equal to the aggregate stated liquidation amount of the Preferred Securities of such holder on or after the due dates specified in the subordinated debt securities of such series.

If the Company fails to make payments under any Guarantee, such Guarantee provides a mechanism that allows the holders of the Preferred Securities to which such Guarantee relates to direct the Guarantee Trustee to enforce its rights under such

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Guarantee. In addition, a holder of Preferred Securities may institute a legal proceeding directly against the Company to enforce its rights under the related Guarantee without first instituting a legal proceeding against or requesting or directing that action be taken by the Guarantee Trustee or any other person or entity.

Each Guarantee, the Subordinated Note Indenture, the subordinated debt securities of the related series, the related Trust Agreement and the related Agreement as to Expenses and Liabilities, as described above, constitute a full and unconditional guarantee by the Company of the payments due on the related series of Preferred Securities.

Upon any voluntary or involuntary dissolution, winding-up or termination of any Trust, unless subordinated debt securities of the related series are distributed in connection with such action, the holders of Preferred Securities of such Trust will be entitled to receive, out of assets legally available for distribution to holders, a liquidation distribution in cash as described in the applicable prospectus supplement. Upon any voluntary or involuntary liquidation or bankruptcy of the Company, the Property Trustee, as holder of the related series of subordinated debt securities, would be a

subordinated creditor of the Company, subordinated in right of payment to all Senior Indebtedness, but entitled to receive payment in full of principal and interest, before any stockholders of the Company receive payments or distributions. Because the Company is guarantor under each Guarantee and has agreed to pay for all costs, expenses and liabilities of each Trust (other than the Trust's obligations to holders of the Preferred Securities) pursuant to the related Agreement as to Expenses and Liabilities, the positions of a holder of Preferred Securities and a holder of subordinated debt securities of the related series relative to other creditors and to stockholders of the Company in the event of liquidation or bankruptcy of the Company would be substantially the same.

A default or event of default under any Senior Indebtedness would not constitute a default or Event of Default under the Subordinated Note Indenture. However, in the event of payment defaults under, or acceleration of, Senior Indebtedness, the subordination provisions of the subordinated debt securities provide that no payments may be made in respect of the subordinated debt securities until such Senior Indebtedness has been paid in full or any payment default thereunder has been cured or waived. Failure to make required payments on the subordinated debt securities of any series would constitute an Event of Default under the Subordinated Note Indenture with respect to the subordinated debt securities of such series except that failure to make interest payments on the subordinated debt securities of such series will not be an Event of Default during an extension period as described in the applicable prospectus supplement.

### **BOOK-ENTRY SYSTEM**

Unless otherwise indicated in the applicable prospectus supplement, each series of debt securities (other than debt securities issued to a Trust) and Preferred Securities will initially be issued in the form of one or more global securities, in registered form, without coupons. The global security will be deposited with, or on behalf of, the depository, and registered in the name of the depository or a nominee of the depository. Unless otherwise indicated in the applicable prospectus supplement, the depository for any global securities will be The Depository Trust Company, or DTC.

So long as the depository, or its nominee, is the registered owner of a global security, such depository or such nominee, as the case may be, will be considered the owner of such global security for all purposes under the applicable indenture, including for any notices and voting. Except in limited circumstances, the owners of beneficial interests in a global security will not be entitled to have securities registered in their names, will not receive or be entitled to receive physical delivery of any such securities and will not be considered the registered holder thereof under the applicable indenture. Accordingly, each person holding a beneficial interest in a global security must rely on the procedures of the depository and, if such person is not a direct participant, on procedures of the direct participant through which such person holds its interest, to exercise any of the rights of a registered owner of such security.

Global securities may be exchanged in whole for certificated securities only if:

- \* the depository notifies us that it is unwilling or unable to continue as depository for the global securities or the depository has ceased to be a clearing agency registered under the Exchange Act and, in either case, we thereupon fail to appoint a successor depository within 90 days;
- \* we, at our option, notify the trustee in writing that we elect to cause the issuance of certificated securities; or
- \* there shall have occurred and be continuing an event of default with respect to the applicable securities of any series

In any such case, we have agreed to notify the applicable trustee in writing that, upon surrender by the direct participants and indirect participants of their interest in such global securities, certificated securities representing the applicable securities will be issued to each person that such direct participants and indirect participants and the depository identify as being the beneficial owners of such securities.

The following is based solely on information furnished by DTC:

DTC will act as depository for the global securities. The global securities will be issued as fully-registered securities registered in the name of Cede & Co., DTC's partnership nominee. One fully-registered global security certificate will be issued for each issue of the global securities, each in the aggregate principal amount of such issue and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing corporation" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its direct participants deposit with DTC. DTC also facilitates the settlement among direct participants of securities transactions, such as transfers and pledges, in deposited

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securities through electronic computerized book-entry changes in direct 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, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly, which are referred to as indirect participants and, together with the direct participants, the participants. The rules applicable to DTC and its participants are on file with the SEC.

Purchases of global securities under the DTC system must be made by or through direct participants, who will receive a credit for such purchases of global securities on DTC's records. The ownership interest of each actual purchaser of each global security, or beneficial owners, is in turn to be recorded on the direct and indirect participants' records. Beneficial owners will not receive written confirmation from DTC of their purchase, but beneficial owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the direct or indirect participant through which the beneficial owners entered into the transaction. Transfers of ownership interests in the global 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 interests in the global securities, except in the event that use of the book-entry system for the global securities is discontinued.

To facilitate subsequent transfers, all global securities deposited by participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of global securities with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual beneficial owners of the global securities; DTC's records reflect only the identity of the direct participants to whose accounts such global 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.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants, and by direct participants 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.

If the global securities are redeemable, redemption notices shall be sent to Cede & Co. If less than all of the global securities are being redeemed, DTC's practice is to determine by lot the amount of the interest of each direct participant in such issue to be redeemed.

Neither DTC nor Cede & Co. will consent or vote with respect to the global securities. Under its usual procedures, DTC mails an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns Cede & Co's consenting or

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voting rights to those direct participants whose accounts the global securities are credited on the record date, identified in a listing attached to the omnibus proxy.

Principal, interest and premium payments, if any, on the global securities will be made to DTC in immediately available funds. DTC's practice is to credit direct participants' accounts on the date on which interest is payable in accordance with the respective holdings shown on DTC's records, unless DTC has reason to believe it will not receive payment on such date. Payments by participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such participant and not of DTC, the trustee for such securities, or us, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and premium, if any, on any of the aforementioned securities represented by global securities to DTC is the responsibility of the appropriate trustee and us. Disbursement of such payments to direct participants shall be the responsibility of DTC, and disbursement of such payments to the beneficial owners shall be the responsibility of the participants.

The information in this section covering DTC and DTC's book-entry system has been obtained from sources, including DTC, which we believe to be reliable.

The underwriters, dealers or agents of any of the securities may be direct participants of DTC.

**None of the trustees, us or any agent for payment on or registration of transfer or exchange of any global security will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in such global security or for maintaining, supervising or reviewing any records relating to such beneficial interests.**

## **PLAN OF DISTRIBUTION**

The Company may sell the senior debt securities and the subordinated debt securities and the Trusts may sell the Preferred Securities in one or more of the following ways from time to time: (i) to underwriters for resale to the public or to institutional investors; (ii) directly to institutional investors; or (iii) through agents to the public or to institutional investors. The prospectus supplement with respect to each series of senior debt securities, subordinated debt securities or Preferred Securities will set forth the terms of the offering of such senior debt securities, subordinated debt securities or Preferred Securities, including the name or names of any underwriters or agents, the purchase price of such senior debt securities, subordinated debt securities or Preferred Securities and the proceeds to the Company or the applicable Trust from such sale, any underwriting discounts or agency fees and other items constituting underwriters' or agents' compensation, any initial public offering price, any discounts or concessions allowed or reallocated or paid to dealers and any securities exchange on which such senior debt securities, subordinated debt securities or Preferred Securities may be listed.

If underwriters participate in the sale, such senior debt securities, subordinated debt securities or Preferred Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale.

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Unless otherwise set forth in the prospectus supplement, the obligations of the underwriters to purchase any series of senior debt securities, subordinated debt securities or Preferred Securities will be subject to certain conditions precedent and the underwriters will be obligated to purchase all of such series of senior debt securities, subordinated debt securities or Preferred Securities, if any are purchased.

Underwriters and agents may be entitled under agreements entered into with the Company and/or the applicable Trust to indemnification against certain civil liabilities, including liabilities under the 1933 Act. Underwriters and agents may engage in transactions with, or perform services for, the Company in the ordinary course of business.

Each series of senior debt securities, subordinated debt securities or Preferred Securities will be a new issue of securities and will have no established trading market. Any underwriters to whom senior debt securities, subordinated debt securities or Preferred Securities are sold for public offering and sale may make a market in such senior debt securities, subordinated debt securities or Preferred Securities, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. The senior debt securities, subordinated debt securities or Preferred Securities may or may not be listed on a national securities exchange.

## **LEGAL MATTERS**

Legal matters with respect to the debt securities offered hereby will be passed upon for the Company by Jeanie Sell Latz, Esq., Corporate Secretary. At August 6, 2003, Ms. Latz owned beneficially 22,427 shares of Great Plains Energy's common stock, including option grants and shares that may be acquired at a later date based on corporate and Ms. Latz's individual performance.

Certain matters of Delaware law relating to the validity of the Preferred Securities will be passed upon on behalf of the Company and the Trusts by Pepper Hamilton LLP, special Delaware counsel to the Company and the Trusts.

Certain legal matters will be passed upon for the underwriters by Dewey Ballantine LLP, New York, New York. Dewey Ballantine LLP will rely for purposes of their opinions upon the opinion of Ms. Latz as to matters of Missouri law. Dewey Ballantine LLP has performed, and may perform in the future, legal services for the Company and its affiliates.

## **EXPERTS**

The consolidated financial statements as of December 31, 2002, and for the year then ended and the related financial statement schedule, incorporated in this prospectus by reference to the Current Report on Form 8-K/A of Kansas City Power & Light Company (a wholly-owned subsidiary of Great Plains Energy Incorporated) dated August 14, 2003, (the "August 14, 2003 Form 8-K/A") have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report, which is incorporated herein by reference (which report expresses an unqualified opinion and includes an explanatory paragraph referring to a change in accounting principle), and has been so incorporated in

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reliance upon the report of such firm given on their authority as experts in auditing and accounting.



The consolidated financial statements of Kansas City Power & Light Company (a wholly-owned subsidiary of Great Plains Energy Incorporated) as of December 31, 2001 and for each of the two years in the period ended December 31, 2001 incorporated in this prospectus by reference to the August 14, 2003 Form 8-K/A, except as they relate to DTI Holdings, Inc. and Subsidiaries (Debtors-in-Possession), and the 2001 and 2000 financial statement schedule information incorporated in this prospectus by reference to the August 14, 2003 Form 8-K/A, have been audited by PricewaterhouseCoopers LLP, independent accountants, whose reports thereon (which report relating to the consolidated financial statements as of December 31, 2001 and for each of the two years in the period ended December 31, 2001 includes an explanatory paragraph relating to the Company's corporate reorganization in 2001) also appear in the August 14, 2003 Form 8-K/A. The report of PricewaterhouseCoopers LLP, independent accountants, on the consolidated financial statements as of December 31, 2001 and for each of the two years in the period ended December 31, 2001 referred to above, insofar as it relates to the amounts included for DTI Holdings, Inc. and Subsidiaries (Debtors-in-Possession), is based solely on the report of Deloitte & Touche LLP. The financial statements of DTI Holdings, Inc. and Subsidiaries (Debtors-in-Possession) (not presented separately or incorporated by reference herein) have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report (which expresses an unqualified opinion and includes explanatory paragraphs referring to DTI Holdings, Inc. and Subsidiaries' filing for reorganization under Chapter 11 of the Federal Bankruptcy Code, substantial doubt about DTI Holdings, Inc. and Subsidiaries' ability to continue as a going concern and an impairment charge recorded by DTI Holdings, Inc. and Subsidiaries) which also appears in the August 14, 2003 Form 8-K/A. The consolidated financial statements of Kansas City Power & Light Company referred to above have been incorporated in this prospectus in reliance on the reports of such firms, given on their authority as experts in auditing and accounting.

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 14. Other Expenses of Issuance and Distribution.

Expenses payable by Registrant for the sale of the Securities, other than underwriting discount and commissions, are estimated as follows:

Securities and Exchange Commission registration fee	\$ 20,655.00
Printing	40,000.00
Services of Independent Auditors and Accountants	75,000.00
Fees and expenses of Trustees	50,000.00
Rating agency fees	195,000.00
New York Stock Exchange Listing Fees	54,090.00
Miscellaneous	<u>65,255.00</u>
Total	\$500,000.00

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#### Item 15. Indemnification of Directors and Officers.

RSMo. Section 351.355 (2001) provides as follows:

1. A corporation created under the laws of this state may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he or she 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 or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner he or she 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 his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she 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 reasonable cause to believe that his or her conduct was unlawful.

2. The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the act that he or she 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 or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in

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good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

3. Except as otherwise provided in the Articles of Incorporation or the bylaws, to the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections 1 and 2 of this section, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the action, suit or proceeding.

4. Any indemnification under subsections 1 and 2 of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in this section. The determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders.

5. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the corporation as authorized in this section.

6. The indemnification provided by this section shall be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Articles of Incorporation or bylaws or any agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7. A corporation created under the laws of this state shall have the power to give any further indemnity, in addition to the indemnity authorized or contemplated under other subsections of this section, including subsection 6, to any person who is or was a director, officer, employee or agent, or to any person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided such further indemnity is either (i) authorized, directed, or provided for in the Articles of Incorporation of the corporation or any duly adopted amendment thereof or (ii) is authorized, directed, or provided for in any bylaw

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or agreement of the corporation which has been adopted by a vote of the shareholders of the corporation, and provided further that no such indemnity shall indemnify any person from or on account of such person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Nothing in this subsection shall be deemed to limit the power of the corporation under subsection 6 of this section to enact bylaws or to enter into agreements without shareholder adoption of the same.

8. The corporation may purchase and maintain insurance on behalf of any person who 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 or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of this section.

9. Any provision of this chapter to the contrary notwithstanding, the provisions of this section shall apply to all existing and new domestic corporations, including but not limited to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, corporations formed for benevolent, religious, scientific or educational purposes and nonprofit corporations.

10. For the purpose of this section, references to "the corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such

constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he or she would if he or she had served the resulting or surviving corporation in the same capacity.

11. For purposes of this section, the term "other enterprise" shall include employee benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and the term "serving at the request of the corporation" shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

The officers and directors of the Company have entered into indemnification agreements with the Company indemnifying such officers and directors to the extent allowed under the above RSMo. Section 351.355 (2001).

Article XIII of the Restated Articles of Consolidation of the Company provides as follows:

ARTICLE THIRTEENTH. (a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is

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or was a director or officer of the Company or is or was an employee of the Company acting within the scope and course of his or her employment or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Company to the fullest extent authorized by The Missouri General and Business Corporation Law, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid to or to be paid in settlement) actually and reasonably incurred by such person in connection therewith. The Company may in its discretion by action of its Board of Directors provide indemnification to agents of the Company as provided for in this ARTICLE THIRTEENTH. Such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

(b) Rights Not Exclusive. The indemnification and other rights provided by this ARTICLE THIRTEENTH shall not be deemed exclusive of any other rights to which a person may be entitled under any applicable law, By-laws of the Company, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in any other capacity while holding the office of director or officer, and the Company is hereby expressly authorized by the shareholders of the Company to enter into agreements with its directors and officers which provide greater indemnification rights than that generally provided by The Missouri General and Business Corporation Law; provided, however, that no such further indemnity shall indemnify any person from or on account of such director's or officer's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Any such agreement providing for further indemnity entered into pursuant to this ARTICLE THIRTEENTH after the date of approval of this ARTICLE THIRTEENTH by the Company's shareholders need not be further approved by the shareholders of the Company in order to be fully effective and enforceable.

(c) Insurance. The Company may purchase and maintain insurance on behalf of any person who was or is a director, officer, employee or agent of the Company, or was or is serving at the request of the Company as a director, officer, employee or agent of another company, partnership, joint venture, trust or other enterprise against any liability asserted against or incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of this ARTICLE THIRTEENTH.

(d) Amendment. This ARTICLE THIRTEENTH may be hereafter amended or repealed; however, no amendment or repeal shall reduce, terminate or otherwise adversely affect the right of a person entitled to obtain indemnification or an advance of expenses with respect to an action, suit or proceeding that pertains to or arises out of actions or omissions that occur prior to the later of (a) the effective date of such amendment or repeal; (b) the expiration date of such person's then current term of office with, or service for, the Company (provided such person has a stated term of office or service and completes such term); or (c) the effective date such person resigns his or her office or terminates his or her service (provided such person has a stated term of office or service but resigns prior to the expiration of such term).

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Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Act") may be permitted to directors, officers and controlling persons of Registrant pursuant to the foregoing provisions, or otherwise, Registrant has 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 Registrant of expenses incurred or paid by a director, officer or controlling person of Registrant in the successful defense of any action, suit or proceeding) is asserted against Registrant by such director, officer or controlling person in connection with the securities being registered, 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.

Item 16. List of Exhibits.

Exhibit Number	Description of Exhibit
1.a	** Form of Underwriting Agreement for the senior debt securities.
1.b	** Form of Underwriting Agreement for the subordinated debt securities.
1.c	** Form of Underwriting Agreement for the Preferred Securities.
4.a	Certificate of Trust for KCPL Financing II (the Certificate of Trust for each other trust is identical except for the names and will be filed upon request).
4.b	Declaration of Trust of KCPL Financing II and KCPL Financing III.
4.c	Form of Amended and Restated Declaration of Trust.
4.d	Form of Senior Indenture between Kansas City Power & Light Company and The Bank of New York, as Trustee.
4.e	Form of Subordinated Indenture between Kansas City Power & Light Company and The Bank of New York, as Trustee.
4.f	Form of Preferred Security (included in 4.c).
4.g	Form of Senior Debt Security (included in 4.d).
4.h	Form of Subordinated Debt Security (included in 4.e).
4.i	Form of Preferred Securities Guarantee Agreement.
4.j	* General Mortgage and Deed of Trust dated as of December 1, 1986, between Kansas City Power & Light Company and UMB Bank, n.a. (formerly United Missouri Bank of Kansas City, N.A.), Trustee (Exhibit 4-bb to Form 10-K for the year ended December 31, 1986).

- 4.k \* Fourth Supplemental Indenture dated as of February 15, 1992, to Indenture dated as of December 1, 1986 (Exhibit 4-y to Form 10-K for the year ended December 31, 1991).
- 4.l \* Fifth Supplemental Indenture dated as of September 15, 1992, to Indenture dated as of December 1, 1986 (Exhibit 4-a to quarterly report on Form 10-Q for the period ended September 30, 1992).
- 4.m \* Sixth Supplemental Indenture dated as of November 1, 1992, to Indenture dated as of December 1, 1986 (Exhibit 4-z to Registration Statement, Registration No. 33-54196).
- 4.n \* Seventh Supplemental Indenture dated as of October 1, 1993, to Indenture dated as of December 1, 1986 (Exhibit 4-a to quarterly report on Form 10-Q for the period ended September 30, 1993).
- 4.o \* Eighth Supplemental Indenture dated as of December 1, 1993, to Indenture dated as of December 1, 1986 (Exhibit 4 to Registration Statement, Registration No. 33-51799).
- 4.p \* Ninth Supplemental Indenture dated as of February 1, 1994, to Indenture dated as of December 1, 1986 (Exhibit 4-h to Form 10-K for year ended December 31, 1993).
- 4.q \* Indenture for Medium-Term Note Program dated as of February 15, 1992, between Kansas City Power & Light Company and The Bank of New York (Exhibit 4-bb to Registration Statement, Registration No. 33-45736).
- 4.r \* Indenture for Medium-Term Note Program dated as of November 15, 1992, between Kansas City Power & Light Company and The Bank of New York (Exhibit 4-aa to Registration Statement, Registration No. 33-54196).
- 4.s \* Amended and Restated Declaration of Trust of Kansas City Power & Light Company Financing I dated April 15, 1997 (Exhibit 4-a to Form 10-Q for the period ended March 31, 1997).
- 4.t \* Indenture dated as of April 1, 1997 between the Company and The First National Bank of Chicago, Trustee (Exhibit 4-b to Form 10-Q for the period ended March 31, 1997).
- 4.u \* First Supplemental Indenture dated as of April 1, 1997 to the Indenture dated as of April 1, 1997 between the Company and The First National Bank of Chicago, Trustee (Exhibit 4-c to Form 10-Q for the period ended March 31, 1997).
- 4.v \* Preferred Securities Guarantee Agreement dated April 15, 1997 (Exhibit 4-d to Form 10-Q for the period ended March 31, 1997).
- 4.w \*

Indenture for \$150 million aggregate principal amount of 6.50% senior debt securities due November 15, 2011 and \$250 million aggregate principal amount of 7.125% senior debt securities due December 15, 2005 dated as of December 1, 2000, between Kansas City Power & Light Company and The Bank of New York (Exhibit 4-a to Report on Form 8-K dated December 18, 2000).

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- 4.x \* Indenture for \$225 million aggregate principal amount of 6.00% senior debt securities due 2007, Series B, dated March 1, 2002 between The Bank of New York and Kansas City Power & Light Company (Exhibit 4.1.b. to Form 10-Q for the period ended March 31, 2002).
- 5.a Opinion of Pepper Hamilton L.L.P. regarding legality of Preferred Securities.
- 5.b Opinion and consent of Jeanie Sell Latz, Corporate Secretary of KCP&L regarding legality of Debt and Preferred Securities Guarantees.
- 12 Schedule of computation of ratio of earnings to fixed charges.
- 23.a Consent of Deloitte & Touche LLP.
- 23.b Consent of PricewaterhouseCoopers LLP.
- 23.c Consent of Deloitte & Touche LLP.
- 23.d Consent of Pepper Hamilton L.L.P. (included as part of Exhibit 5.a).
- 23.e Consent of Jeanie Sell Latz, Corporate Secretary (included as part of Exhibit 5.b).
- 24 Powers of Attorney.
- 25.a Form T-1 Statement of Eligibility of The Bank of New York, as Trustee under the Senior Indenture, under the Trust Indenture Act of 1939.
- 25.b Form T-1 Statement of Eligibility of The Bank of New York, as Trustee under the Subordinated Indenture, under the Trust Indenture Act of 1939
- 25.c Form T-1 Statement of Eligibility of The Bank of New York as Property Trustee under the Amended and Restated Declaration of Trust of KCPL Financing II.
- 25.d Form T-1 Statement of Eligibility of The Bank of New York as Guarantee Trustee under the Preferred Security Guarantee of Kansas City Power & Light Company for the benefit of the holders of Preferred Securities of KCPL Financing II.

25.e Form T-1 Statement of Eligibility of The Bank of New York as Property Trustee under the Amended and Restated Declaration of Trust of KCPL Financing III.

25.f Form T-1 Statement of Eligibility of The Bank of New York as Guarantee Trustee under the Preferred Security Guarantee of Kansas City Power & Light Company for the benefit of the holders of Preferred Securities of KCPL Financing III.

\*Exhibits listed above which have heretofore been filed with the Commission and which were designated as noted above are hereby incorporated herein by reference and made a part hereof with the same effect as if filed herewith.

\*\*To be subsequently filed or incorporated by reference.

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Item 17. Undertakings.

(1) The undersigned Registrant hereby undertakes:

(a) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act; (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; provided, however, that paragraphs (1)(a)(i) and (1)(a)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act that are incorporated by reference in the Registration Statement;

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

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

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of Registrant'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.

(c) See the last paragraph of Item 15.

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2. The undersigned Registrant hereby undertakes that,

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

(b) 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.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Kansas City, State of Missouri, on the 26<sup>th</sup> day of August 2003.

KANSAS CITY POWER & LIGHT COMPANY

By: /s/Bernard J. Beaudoin

(Bernard J. Beaudoin)  
Chairman of the Board and Chief  
Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement or amendment has been signed below by the following persons in the capacities and on the dates indicated.

Signature

Title

Date

/s/Bernard J. Beaudoin  
(Bernard J. Beaudoin)

Chairman of the Board and Chief )  
Executive Officer )  
(Principal Executive Officer) )



		)	
<u>/s/Andrea F. Bielsker</u> (Andrea F. Bielsker)	Senior Vice President-Finance, Chief Financial Officer and Treasurer (Principal Financial Officer)	) ) ) )	
		)	
<u>/s/Lori A. Wright</u> (Lori A. Wright)	Controller (Principal Accounting Officer)	) )	
		)	
David L. Bodde* (David L. Bodde)	Director	) )	
		)	
Mark A. Ernst* (Mark A. Ernst)	Director	) )	
		)	
William K. Hall* (William K. Hall)	Director	) )	
		)	
Randall C. Ferguson, Jr* (Randall C. Ferguson, Jr.)	Director	)	August 26, 2003
		)	
Luis A. Jimenez* (Luis A. Jimenez)	Director	) )	
		)	
James A. Mitchell* (James A. Mitchell)	Director	) )	
		)	
William C. Nelson* (William C. Nelson)	Director	) )	
		)	
Linda Hood Talbott* (Linda Hood Talbott)	Director	) )	
		)	
Robert H. West* (Robert H. West)	Director	) )	
*By: /s/Bernard J. Beaudoin (Bernard J. Beaudoin) Attorney-in-fact			

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Pursuant to the requirements of the Securities Act of 1933, KCPL Financing II certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Kansas City, State of Missouri, on the 26<sup>th</sup> day of August, 2003.

/s/Andrea F. Bielsker

By: Andrea F. Bielsker  
as Trustee

Pursuant to the requirements of the Securities Act of 1933, KCPL Financing III certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Kansas City, State of Missouri, on the 26<sup>th</sup> day of August, 2003.

KCPL FINANCING III

/s/Andrea F. Bielsker

By: Andrea F. Bielsker  
as Trustee

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#### INDEX TO EXHIBITS

Exhibit Number	Description of Exhibit
1.a	** Form of Underwriting Agreement for the senior debt securities.
1.b	** Form of Underwriting Agreement for the subordinated debt securities.
1.c	** Form of Underwriting Agreement for the Preferred Securities.
4.a	Certificate of Trust for KCPL Financing II (the Certificate of Trust for each other trust is identical except for the names and will be filed upon request).
4.b	Declaration of Trust of KCPL Financing II and KCPL Financing III.
4.c	Form of Amended and Restated Declaration of Trust.
4.d	Form of Senior Indenture between Kansas City Power & Light Company and The Bank of New York, as Trustee.
4.e	Form of Subordinated Indenture between Kansas City Power & Light Company and The Bank of New York, as Trustee.
4.f	Form of Preferred Security (included in 4.c)

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4.h Form of Subordinated Debt Security (included in 4.e).

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4.j \* General Mortgage and Deed of Trust dated as of December 1, 1986, between Kansas City Power & Light Company and UMB Bank, n.a. (formerly United Missouri Bank of Kansas City, N.A.), Trustee (Exhibit 4-bb to Form 10-K for the year ended December 31, 1986).

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4.s \*

Amended and Restated Declaration of Trust of Kansas City Power & Light Company Financing I dated April 15, 1997 (Exhibit 4-a to Form 10-Q for the period ended March 31, 1997).

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- 4.u \* First Supplemental Indenture dated as of April 1, 1997 to the Indenture dated as of April 1, 1997 between the Company and The First National Bank of Chicago, Trustee (Exhibit 4-c to Form 10-Q for the period ended March 31, 1997).
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- 4.w \* Indenture for \$150 million aggregate principal amount of 6.50% senior debt securities due November 15, 2011 and \$250 million aggregate principal amount of 7.125% senior debt securities due December 15, 2005 dated as of December 1, 2000, between Kansas City Power & Light Company and The Bank of New York (Exhibit 4-a to Report on Form 8-K dated December 18, 2000).
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- 5.a Opinion of Pepper Hamilton L.L.P. regarding legality of Preferred Securities.
- 5.b Opinion and consent of Jeanie Sell Latz, Corporate Secretary of KCP&L regarding legality of Debt and Preferred Securities Guarantees.
- 12 Schedule of computation of ratio of earnings to fixed charges.
- 23.a Consent of Deloitte & Touche LLP.
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- 23.c Consent of Deloitte & Touche LLP.
- 23.d Consent of Pepper Hamilton L.L.P. (included as part of Exhibit 5.a).
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- 24 Powers of Attorney.

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  - 25.c Form T-1 Statement of Eligibility of The Bank of New York as Property Trustee under the Amended and Restated Declaration of Trust of KCPL Financing II.
  
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STATE OF DELAWARE  
OFFICE OF THE SECRETARY OF STATE

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF BUSINESS TRUST REGISTRATION OF "KCPL FINANCING II", FILED IN THIS OFFICE ON THE ELEVENTH DAY OF DECEMBER, A.D. 1996, AT 12:20 O'CLOCK P.M.

SEAL] /S/EDWARD J. FREEL  
EDWARD J. FREEL, SECRETARY OF STATE

2693205 8100 AUTHENTICATION: 8233456  
960362863 DATE: 12-11-96

CERTIFICATE OF TRUST  
OF  
KCPL FINANCING II

THIS CERTIFICATE OF TRUST of KCPL Financing II (the "Trust"), dated as of December 10, 1996, is being duly executed and filed by the undersigned, as trustees, to create a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801, et seq.).

1. Name. The name of the business trust being created hereby is KCPL Financing II.
2. Delaware Trustee. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are First Chicago Delaware Inc., 300 King Street, Wilmington, Delaware 19801.
3. Effective Date. This Certificate of Trust shall be effective as of its filing.

IN WITNESS WHEREOF, the undersigned, being the only trustees of the Trust, have executed this Certificate of Trust as of the date first above written.

FIRST CHICAGO DELAWARE INC.  
not in its individual capacity  
but solely as Trustee

By: /s/Steven M. Wagner  
Steven M. Wagner  
Vice President

ANDREA F. BIELSKER  
not in her individual capacity  
but solely as Trustee

By: /s/Andrea F. Bielsker

THE FIRST NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely as Trustee

By: /s/ John R. Prendiville

John R. Prendiville  
Vice President

DECLARATION OF TRUST  
OF  
KCPL FINANCING II

This DECLARATION OF TRUST of KCPL Financing II (the "Trust"), dated as of December 10, 1996, among (i) Kansas City Power & Light Company, a Missouri corporation (the "Depositor"), (ii) The First National Bank of Chicago, a national banking association, not in its individual capacity but solely as trustee of the Trust, (iii) First Chicago Delaware Inc., a Delaware corporation, not in its individual capacity but solely as trustee of the Trust, and (iv) Andrea F. Bielsker, an individual employed by the Depositor, not in her individual capacity but solely as trustee of the Trust (each of such trustees in (ii), (iii) and (iv) a "Trustee" and collectively, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby shall be known as "KCPL Financing II", in which name the Trustees, or the Depositor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trust the sum of \$10. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware code, 12 Del. C. (section symbol) 3801 et seq. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

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

4. The Depositor and the Trustees hereby authorize and direct the Depositor (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) a Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to the 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred

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Securities of the Trust and certain other securities and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust under Section 12(b) of the Securities Exchange Act of 1934, as amended; (ii) to file with the New York Stock Exchange (the "Exchange") and execute on behalf of the Trust a listing application 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 Exchange and (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such juri sdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable. In the event that any filing referred to in clauses (i) and (ii) above is required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by one or more of the Trustees, each of the Trustees, in its or her capacity as Trustee of the Trust, is hereby authorized and, to the extent so required, directed to join in any such filing and to execute on behalf of the Trust any and all the foregoing, it being understood that The First National Bank of Chicago and First Chicago Delaware Inc., in their capacities as Trustees of the Trust, respectively, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws. In connection with all of the foregoing, the Depositor and each Trustee, solely in its or her capacity as Trustee of the Trust, hereby constitutes and appoints Jeanie S. Latz and Andrea F. Bielsker, and each of them, as its or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or such Trustee or in the Depositor's or such Trustee's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith and in connection with the filing of the 1933 Act Registration Statement and the 1934 Act Registration Statement, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorney's-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.



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

6. The number of Trustees initially shall be three (3) 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

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Trustee shall either be a natural person who is a resident of the State of Delaware, or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. The Trustees may resign upon thirty days prior notice to Depositor.

7. First Chicago Delaware Inc., in its capacity as Trustee, shall not have any of the powers or duties of the Trustees set forth herein and shall be a Trustee of the Trust for the sole purpose of satisfying the requirements of Section 3807 of the Business Trust Act.

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

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

KANSAS CITY POWER & LIGHT COMPANY,  
as Depositor

ANDREA F. BIELSKER, not in her  
individual capacity but solely as  
Trustee

By: /s/Jeanie Sell Latz

By: /s/Andrea F. Bielsker

  
Jeanie S. Latz  
Sr. Vice President

THE FIRST NATIONAL BANK OF CHICAGO,  
not in its individual capacity but  
solely as Trustee


By: /s/John R. Prendiville

By: 

John R. Prendiville  
Vice President

FIRST CHICAGO DELAWARE INC. not in  
its individual capacity but solely  
as Trustee

By: /s/Steven M. Wagner

  
Steven M. Wagner  
Vice President

This DECLARATION OF TRUST of KCPL Financing III (the "Trust"), dated as of December 10, 1996, among (i) Kansas City Power & Light Company, a Missouri corporation (the "Depositor"), (ii) The First National Bank of Chicago, a national banking association, not in its individual capacity but solely as trustee of the Trust, (iii) First Chicago Delaware Inc., a Delaware corporation, not in its individual capacity but solely as trustee of the Trust, and (iv) Andrea F. Bielsker, an individual employed by the Depositor, not in her individual capacity but solely as trustee of the Trust (each of such trustees in (ii), (iii) and (iv) a "Trustee" and collectively, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby shall be known as "KCPL Financing III", in which name the Trustees, or the Depositor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trust the sum of \$10. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware code, 12 Del. C. (section symbol) 3801 et seq. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

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

4. The Depositor and the Trustees hereby authorize and direct the Depositor (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) a Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to the 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred Securities of the Trust and certain other securities and (b) a Registration Statement on Form 8-A (the "1934 Act Registration

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Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust under Section 12(b) of the Securities Exchange Act of 1934, as amended; (ii) to file with the New York Stock Exchange (the "Exchange") and execute on behalf of the Trust a listing application 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 Exchange and (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable. In the event that any filing referred to in clauses (i) and (ii) above is required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by one or more of the Trustees, each of the Trustees, in its or her capacity as Trustee of the Trust, is hereby authorized and, to the extent so required, directed to join in any such filing and to execute on behalf of the Trust any and all the foregoing, it being understood that The First National Bank of Chicago and First Chicago Delaware Inc., in their capacities as Trustees of the Trust, respectively, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or state securities or blue sky laws. In connection with all of the foregoing, the Depositor and each Trustee, solely in its or her capacity as Trustee of the Trust, hereby constitutes and appoints Jeanie S. Latz and Andrea F. Bielsker, and each of them, as its or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or such Trustee or in the Depositor's or such Trustee's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith and in connection with the filing of the 1933 Act Registration Statement and the 1934 Act Registration Statement, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorney's-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

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

6. The number of Trustees initially shall be three (3) and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be a natural person who is a resident of the State of Delaware, or, if not a natural person, an entity which has its

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principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. The Trustees may resign upon thirty days prior notice to Depositor.

7. First Chicago Delaware Inc., in its capacity as Trustee, shall not have any of the powers or duties of the Trustees set forth herein and shall be a Trustee of the Trust for the sole purpose of satisfying the requirements of Section 3807 of the Business Trust Act.

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


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

KANSAS CITY POWER & LIGHT COMPANY,  
as Depositor

ANDREA F. BIELSKER, not in her  
individual capacity but solely as  
Trustee

By: /s/Jeanie Sell Latz

By: /s/Andrea F. Bielsker

  
Jeanie S. Latz  
Sr. Vice President

THE FIRST NATIONAL BANK OF CHICAGO,  
not in its individual capacity but  
solely as Trustee


By: /s/John R. Prendiville

By: 

John R. Prendiville  
Vice President

FIRST CHICAGO DELAWARE INC. not in  
its individual capacity but solely  
as Trustee

By: /s/Steven M. Wagner

  
Steven M. Wagner  
Vice President

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AMENDED AND RESTATED DECLARATION OF TRUST

KCPL FINANCING \_

Dated as of \_\_\_\_\_, 2003

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## TERMINATION OF TRUST

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**CROSS-REFERENCE TABLE\***

Section of Trust Indenture Act of 1939, as amended	Section of Declaration
_____	_____
310(a)	5.3(a)
310(b)	5.3(c)
310(c)	Inapplicable
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(f)	Inapplicable

315(a)	3.9(b)
315(b)	2.8
315(c)	3.9(a)
315(d)	3.9(a)
316(a)	Exhibit A, 2.6
316(c)	3.6(e)

\* This Cross-Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms or provisions.

AMENDED AND RESTATED DECLARATION OF TRUST  
OF  
KCPL FINANCING \_

THIS AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration"), dated and effective as of \_\_\_\_\_, 2003, by the Trustees (as defined herein), the Sponsor (as defined herein), and by the holders, from time to time, of undivided beneficial interests in the Trust to be issued pursuant to this Declaration;

W I T N E S S E T H:

WHEREAS, certain of the Trustees and the Sponsor have heretofore established a trust (the "Trust") under the Statutory Trust Act (as defined herein) pursuant to a Declaration of Trust dated December 10, 1996 (the "Original Declaration") and a Certificate of Trust filed on December 11, 1996, by the Delaware Trustee (as defined herein) with the Secretary of the State of Delaware, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Subordinated Debentures of the Debenture Issuer;

WHEREAS, all the Trustees and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration;

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

**ARTICLE I**

**INTERPRETATION AND DEFINITIONS**

**SECTION 1.1. Definitions.** Capitalized terms used but not defined elsewhere in this Declaration have the respective meanings assigned to them in this Section 1.1. A term defined anywhere in this Declaration has the same meaning throughout. A term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires.

**Affiliate:**

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

**Authorized Officer:**



The term "Authorized Officer" of a Person means any Person that is authorized to bind such Person.

**Bankruptcy Event:**

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

(a) the entry of a decree or order by a court having jurisdiction in the premises judging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjudication or composition of or in respect of such Person under federal bankruptcy law or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of such decree or order unstayed and in effect for a period of 60 consecutive days; or

(b) the institution by such Person of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under federal bankruptcy law or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of action by such Person in furtherance of any such action.

**Book Entry Interest:**

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

**Business Day:**

The term "Business Day" means any day other than a day on which banking institutions in New York, New York are authorized or required by law to close.

**Certificate:**

The term "Certificate" means a Common Security Certificate or a Preferred Security Certificate.

**Clearing Agency:**

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

**Clearing Agency Participant:**

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

**Closing Date:**

The term "Closing Date" means \_\_\_\_\_, 2003.

**Code:**

The term "Code" means the Internal Revenue Code of 1986.

**Commission:**

The term "Commission" means the Securities and Exchange Commission.

**Common Security:**

The term "Common Security" has the meaning specified in Section 7.1.

**Common Security Certificate:**

The term "Common Security Certificate" means a definitive certificate in fully registered form representing a Common Security substantially in the form of Annex II to Exhibit A.

**Covered Person:**

The term "Covered Person" means:

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

**Debenture Issuer:**

The term "Debenture Issuer" means KCP&L, in its capacity as the issuer of the Subordinated Debentures.

**Debenture Trustee:**

The term "Debenture Trustee" means The Bank of New York, as trustee under the Indenture, until a successor is appointed thereunder and thereafter means such successor trustee.

**Declaration:**

The term "Declaration" means this Amended and Restated Declaration of Trust, as the same may be modified, amended or supplemented.

**Delaware Trustee:**

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

**Definitive Preferred Security Certificates:**

The term "Definitive Preferred Security Certificates" has the meaning set forth in Section 9.4.

**Direction:**

The term "Direction" by a Person means a written direction signed:

- (a) if the Person is a natural person, by that Person; or
- (b) in any other case, in the name of such Person by one or more Authorized Officers of that Person.

**Distribution:**

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

**DTC:**

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

**Event of Default:**

The term "Event of Default" in respect of the Securities means

- (a) an Indenture Default has occurred and is continuing in respect of the Subordinated Debentures; or
- (b) default by the Trust in the payment of any distribution when it becomes due and payable, and continuation of such default for a period of 30 days; or
- (c) default by the Trust in the payment of any redemption price of any Security when it becomes due and payable; or
- (d) default in the performance or breach of any covenant or warranty of the Trustees in this Declaration (other than a covenant or warranty a default in whose performance or breach 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 Trustees by the Holders of at least 10% in 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 Trust.

**Exchange Act:**

The term "Exchange Act" means the Securities Exchange Act of 1934.

**Expense Agreement:**

The term "Expense Agreement" means the Agreement as to Expenses and Liabilities between the KCP&L and the Trust, substantially in the form attached as Exhibit B, as amended from time to time.

**Extension Period**

The term "Extension Period" has the meaning set forth in Section 6.1(b).

**Global Certificate:**

The term "Global Certificate" has the meaning set forth in Section 9.4.

**Holder:**

The term "Holder" means the Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Statutory Trust Act; provided, however, that in determining whether Holders of the requisite liquidation amount of Preferred Securities have voted on any matter provided for in this Declaration, then for the purpose of such determination only (and not for any other purpose hereunder), if the Preferred Securities remain in the form of one or more Global Certificates, the term "Holder" shall mean the holder of the Global Certificate acting at the direction of the Preferred Security Beneficial Owners.

**Indemnified Person:**

The term "Indemnified Person" means any Trustee, any Affiliate of any Trustee, or any officers, directors, shareholders, members, partners, employees, representatives or agents of any Trustee, or any employee or agent of the Trust or its Affiliates.

**Indenture:**

The term "Indenture" means the Indenture dated as of \_\_\_\_\_, 2003 between the Debenture Issuer and the Debenture Trustee, and any amendment thereto and any indenture supplemental thereto or company order pursuant to which the Subordinated Debentures are to be issued.

**Indenture Default:**

The term "Indenture Default" means an "Event of Default" as such term is defined in the Indenture.

**Investment Company:**

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

**Investment Company Act:**

The term "Investment Company Act" means the Investment Company Act of 1940.

**KCP&L:**

The term "KCP&L" means Kansas City Power & Light Company, a Missouri corporation, or any successor entity in a merger or consolidation.

**Legal Action:**

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

**Majority in liquidation amount of the Securities:**

The term "Majority in liquidation amount of the Securities" means, except as provided in the terms of the Preferred Securities or the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or outstanding Common Securities voting separately as a class, representing more than 50% of the aggregate stated liquidation amount (including the stated amount that would be paid on redemption, liquidation or maturity, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of such class.

**Officers' Certificate:**

The term "Officers' Certificate" means, with respect to any Person, a certificate signed by two Authorized Officers of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

(a) a statement that each such officer signing the Certificate has read the covenant or condition and the definition(s) relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each such officer in rendering the Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

**Paying Agent:**

The term "Paying Agent" has the meaning specified in Section 3.8(i).

**Person:**

The term "Person" means any individual, corporation, partnership, limited liability company, joint venture, joint stock company, unincorporated association or government or any agency or political subdivision thereof, or any other entity of whatever nature.

**Preferred Securities Guarantee:**

The term "Preferred Securities Guarantee" means the Preferred Securities Guarantee Agreement to be dated as of \_\_\_\_\_, 2003 of the Sponsor in respect of the Preferred Securities.

**Preferred Security:**

The term "Preferred Security" has the meaning specified in Section 7.1.

**Preferred Security Beneficial Owner:**

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

**Preferred Security Certificate:**

The term "Preferred Security Certificate" means a certificate representing a Preferred Security substantially in the form of Annex I to Exhibit A.

**Property Trustee:**

The term "Property Trustee" means the Trustee meeting the eligibility requirements set forth in Section 5.3.

**Property Trustee Account:**

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

**Quorum:**

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

**Regular Trustee:**

The term "Regular Trustee" means any Trustee other than the Property Trustee and the Delaware Trustee.

**Related Party:**

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

**Responsible Officer:**

The term "Responsible Officer" means any officer within the corporate trust department of the Property Trustee, including any vice-president, any assistant vice-president, any assistant treasurer, any trust officer or any other officer of the Property 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 and who shall have direct responsibility for the administration of the duties of the Property Trustee under this Declaration.

**Rule 3a-5:**

The term "Rule 3a-5" means Rule 3a-5 under the Investment Company Act.

**Securities:**

The term "Securities" mean the Common Securities and the Preferred Securities.

**Securities Act:**

The term "Securities Act" means the Securities Act of 1933.

**66-2/3% in liquidation amount of the Securities:**

The term "66-2/3% in liquidation amount of the Securities" means, except as provided in the terms of the Preferred Securities or the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or outstanding Common Securities, voting separately as a class, representing 66-2/3% of the aggregate stated liquidation amount (including the stated amount that would be paid on redemption, liquidation or maturity, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of such class.

**Sponsor:**

The term "Sponsor" means KCP&L, in its capacity as sponsor of the Trust.

**Statutory Trust Act:**

The term "Statutory Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801 et. seq., as it may be amended from time to time.

**Subordinated Debentures:**

The term "Subordinated Debentures" means the series of Subordinated Debentures to be issued by the Debenture Issuer under the Indenture to the Property Trustee for the benefit of the Trust and the Holders.

**Successor Delaware Trustee:**

The term "Successor Delaware Trustee" has the meaning set forth in Section 5.6(b)(ii).

**Successor Entity:**

The term "Successor Entity" has the meaning set forth in Section 3.15(b)(i).

**Successor Property Trustee:**

The term "Successor Property Trustee" means a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.3(a).

**Successor Securities:**

The term "Successor Securities" has the meaning set for in Section 3.15(b)(i)(B).

**Super-Majority:**

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

**10% in liquidation amount of the Securities:**

The term "10% in liquidation amount of the Securities" means, except as provided in the terms of the Preferred Securities or the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or outstanding Common Securities, voting separately as a class, representing 10% of the aggregate stated liquidation amount (including the stated amount that would be paid on redemption, liquidation or maturity, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of such class.

**Tax Event:**

The term "Tax Event" means a "Tax Event" as defined in the Indenture.

**Treasury Regulations:**

The term "Treasury Regulations" means the income tax regulations including temporary and proposed regulations, promulgated under the Code by the United States Treasury Department, as amended.

**Trustee or Trustees:**

The terms "Trustee" or "Trustees" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

**Trust Indenture Act:**

The term "Trust Indenture Act" means the Trust Indenture Act of 1939.

**Underwriting Agreement:**

The term "Underwriting Agreement" means the Underwriting Agreement for the offering and sale of Preferred Securities.

**SECTION 1.2. Interpretation.** Each definition in this Declaration includes the singular and the plural, and references to the neuter gender include the masculine and feminine where appropriate. Terms which relate to accounting matters shall be interpreted in accordance with generally accepted accounting principles in effect from time to time. References to any statute mean such statute as amended at the time and include any successor legislation. The word "or" is not exclusive, and the words "herein," "hereof" and "hereunder" refer to this Declaration as a whole. The headings to the Articles and Sections are for convenience of reference and shall not affect the meaning or interpretation of this Declaration. References to Articles, Sections, Exhibits and Schedules mean the Articles, Sections, Exhibits and Schedules of this Declaration. The Exhibits and Schedules, if any, are hereby incorporated by reference into and shall be deemed a part of this Declaration.

**ARTICLE II****TRUST INDENTURE ACT****SECTION 2.1. Trust Indenture Act; Application.**

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

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

**SECTION 2.2. Lists of Holders of Securities.** (a) Each of the Sponsor and the Regular Trustee(s) on behalf of the Trust shall provide the Property Trustee (i) within fourteen (14) days after each record date for payment of Distributions a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, *provided* that none of the Sponsor or the Regular Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Sponsor and the Regular Trustees on behalf of the Trust, and (ii) at any other time, within thirty (30) days of receipt by the Trust of a written request for a List of Holders as of a date no more than fourteen (14) days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in its capacity as Paying Agent (if acting in such capacity) *provided* that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

**SECTION 2.3. Reports by the Property Trustee.** Within 60 days after May 15 of each year, the Property Trustee shall provide to the Holders of the Preferred Securities such reports, if any, as are required by Section 313 of the Trust Indenture Act, in the form and in the manner and to the Person or Persons provided by section 313 of the Trust Indenture Act.

**SECTION 2.4. Periodic Reports to Property Trustee.** Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by section 314 (if any) and the compliance certificate as required by section 314 of the Trust Indenture Act.

**SECTION 2.5. Evidence of Compliance with Conditions Precedent.** Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with the conditions precedent, if any, provided for in this Declaration which 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.** (a) The Holders of a Majority in liquidation amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences, *provided* that if the corresponding Indenture Default:

(i) is not waivable under the Indenture, the Event of Default under this Declaration shall also not be waivable; or

(ii) requires the consent or vote of greater than a majority in principal amount of the holders of the Subordinated Debentures (a "Super-Majority") to be waived under the Indenture, the Event of Default under this Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Preferred Securities that the relevant Super-Majority represents to the aggregate principal amount of the Subordinated Debentures outstanding.

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

(b) The Holders of a Majority in liquidation amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any past Event of Default in respect of the Common Securities and its consequences, *provided* that if the corresponding Indenture Default:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under this Declaration as provided below, the Event of Default under this Declaration is not waivable; or

(ii) requires the consent or vote of all of the holders of the Subordinated Debentures to be waived, the Event of Default under this Declaration may only be waived by the vote of all of the Holders of the Preferred Securities, *provided* that each Holder of Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated and until such Events of Default have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. Subject to the foregoing proviso, upon such waiver, any such default shall cease to exist, and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured, for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

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

**SECTION 2.7. Events of Default; Notice.** (a) The Property 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 Securities, notices of all defaults with respect to the Securities known to the Property Trustee, unless such defaults have been cured before the giving of such notice (the term "defaults", for the purposes of this Section 2.7(a), is hereby defined as an Event of Default not including any periods of grace provided for herein or in the Indenture and irrespective of the giving of any notice provided therein or in the Indenture); *provided* that, except for a default in the payment of the principal of (or the premium, if any) or the interest on any of the Subordinated Debentures or in the payment of any sinking fund installment established for the Subordinated Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Property Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Property Trustee shall not be deemed to have knowledge of any default except:

(i) a default arising under Sections 6.01(a)(1) and 6.01(a)(2) of the Indenture; or

(ii) any default as to which a Responsible Officer of the Property Trustee charged with the administration of this Declaration shall have obtained written notice.

### ARTICLE III

#### ORGANIZATION

**SECTION 3.1. Name.** The Trust continued hereby is named "KCPL Financing \_\_", as such name may be modified from time to time by the Regular Trustees following written notice to the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

**SECTION 3.2. Office.** The address of the principal office of the Trust is 1201 Walnut, Kansas City, Missouri 64106-2124. On ten Business Days written notice to the Holders of Securities, the Regular Trustees may designate another principal office.

**SECTION 3.3. Purpose.** The exclusive purposes and functions of the Trust are (a) to issue and sell Securities and use the proceeds from such sale to acquire the Subordinated Debentures and (b) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

**SECTION 3.4. Authority.** Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Regular Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Regular Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust, and an action taken by the Property Trustee in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with a Trustee or the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of such Trustee or Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of a Trustee or the Trustees as set forth in this Declaration.

**SECTION 3.5. Title to Property of the Trust.** Except as provided in Section 3.8 with respect to the Subordinated Debentures and the Property Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

**SECTION 3.6. Powers and Duties of the Regular Trustees.** The Regular Trustees shall have the exclusive power and authority and duty to cause the Trust to engage in the following activities:

(a) to issue and sell the Preferred Securities and the Common Securities in accordance with this Declaration; *provided, however*, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, and, *provided further*, there shall be no interests in the Trust other than the Securities and the issuance of Securities shall be limited to a one-time, simultaneous issuance of both Preferred Securities and Common Securities on the Closing Date;

(b) in connection with the issue and sale of the Preferred Securities, at the direction of the Sponsor, to:

(i) execute and file with the Commission the registration statement on Form S-3 prepared by the Sponsor in relation to the Preferred Securities, including any amendments thereto prepared by the Sponsor;

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

(iii) execute and file an application prepared by the Sponsor to the New York Stock Exchange, Inc. or any other national stock exchange or the Nasdaq Stock Market's National Market for listing upon notice of issuance of any Preferred Securities;

(iv) execute and file with the Commission a registration statement on Form 8-A prepared by the Sponsor relating to the registration of the class of Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto prepared by the Sponsor; and

(v) execute and enter into the Underwriting Agreement and, if applicable, a remarketing agreement providing for the sale and, if applicable, the remarketing of the Preferred Securities;

(c) to acquire the Subordinated Debentures with the proceeds of the sale of the Preferred Securities and the Common Securities; *provided, however*, that the Regular Trustees shall cause legal title to the Subordinated



Debentures to be held of record in the name of the Property Trustee for the benefit of the Trust and the Holders of the Preferred Securities and the Holders of the Common Securities;

(d) 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 as may be necessary or desirable in connection with the consummation hereof;

(e) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Tax Event, *provided* that the Regular Trustees shall consult with the Sponsor and the Property Trustee before taking any action in relation to a Tax Event;

(f) to establish a record date with respect to all actions to be taken hereunder that require a record date to be established, including for the purposes of section 316(c) of the Trust Indenture Act and with respect to Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Preferred Securities and the Holders of Common Securities as to such actions and applicable record dates;

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

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

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

(j) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(k) to give the certificate to the Property Trustee required by section 314(a)(4) of the Trust Indenture Act, which certificate may be executed by any Regular Trustee;

(l) to incur expenses which are necessary or incidental to carry out any of the purposes of the Trust;

(m) to act as, or appoint another Person to act as, transfer agent for the Securities;

(n) to give prompt written notice to the Holders of the Securities of any notice received from the Debenture Issuer of its election (i) to defer payments of interest on the Subordinated Debentures by extending the interest payment period under the Indenture or (ii) to shorten the scheduled maturity date on the Subordinated Debentures;

(o) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing;

(p) to take all action which may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Securities or to enable the Trust to effect the purposes for which the Trust was created;

(q) to take any action, not inconsistent with this Declaration or with applicable law, which the Regular Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.6 including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be characterized for United States federal income tax purposes as a grantor trust and causing each Holder of Securities to be treated as owning an undivided beneficial interest in the Subordinated Debentures; and

(iii) co-operating with the Debenture Issuer to ensure that the Subordinated Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes,

*provided* that such action does not adversely affect the interests of the Holders; and

(r) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust.

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

inconsistent with the purposes and functions of the Trust set forth in Section 3.3.

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

**SECTION 3.7. Prohibition of Actions by the Trust and the Trustees.** The Trust shall not, and the Trustees (including the Property Trustee) shall cause the Trust not to, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not, and the Trustees (including the Property Trustee) shall not cause the Trust to:

- (i) invest any proceeds received by the Trust from holding the Subordinated Debentures but shall distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;
- (ii) acquire any assets other than as expressly provided herein;
- (iii) possess Trust property for other than a Trust purpose;
- (iv) make any loans or incur any indebtedness other than loans represented by the Subordinated Debentures;
- (v) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;
- (vi) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or
- (vii) consent to the amendment, termination or modification of the Indenture, the Subordinated Debentures or any other asset of the Trust, unless the Trust shall have received an opinion of counsel to the effect that such modification will not cause more than an insubstantial risk that for United States federal income tax purposes the Trust will not be characterized as a grantor trust.

**SECTION 3.8. Powers and Duties of the Property Trustee.** (a) The legal title to the Subordinated Debentures shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Trust and the Holders of the Securities. The right, title and interest of the Property Trustee to the Subordinated Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee as set forth in Section 5.6. Such vesting and cessation of title shall be effective whether or not conveyancing documents with respect to the Subordinated Debentures have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Subordinated Debentures to the Regular Trustees or to the Delaware Trustee (if the Property Trustee does not also act as Delaware Trustee).

(c) The Property Trustee shall:

- (i) establish and maintain a segregated non-interest bearing bank account (the "Property Trustee Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Subordinated Debentures held by the Property Trustee, deposit such funds into the Property Trustee Account and make payments to the Holders of the Preferred Securities and the Holders of the Common Securities from the Property Trustee Account in accordance with Section 6.1. Funds in the Property Trustee Account shall be held uninvested until disbursed in accordance with this Declaration. The Property Trustee Account shall be an account which is maintained with a banking institution the rating on whose long-term unsecured indebtedness is at least equal to the rating assigned to the Preferred Securities by a "nationally recognized statistical rating organization", as that term is defined for purposes of Rule 436(g)(2) under the Securities Act;
- (ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Preferred Securities and the Common Securities to the extent the Subordinated Debentures are redeemed or mature; and
- (iii) upon notice of distribution issued by the Regular Trustees in accordance with the terms of the Preferred Securities and the Common Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the Subordinated Debentures to Holders of Securities upon the liquidation and dissolution of the Trust.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of the Securities.

(e) The Property Trustee shall hold the Preferred Securities Guarantee for the benefit of the Holders of the Preferred Securities.

(f) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default or the Property Trustee's duties and obligations under this Declaration (including the Preferred Securities Guarantee) or the Trust Indenture Act.

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

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

(ii) a Successor Property Trustee has been appointed and accepted that appointment in accordance with Section 5.6.

(h) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Subordinated Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee shall, for the benefit of the Holders of the Securities, enforce its rights under the Indenture with respect to the Subordinated Debentures and its rights under the Preferred Securities Guarantee in accordance with the terms of the Preferred Securities Guarantee, subject to the rights of the Holders pursuant to the terms of such Securities and the Preferred Securities Guarantee.

(i) The Property Trustee may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to the Preferred Securities and the Common Securities and any such Paying Agent shall comply with section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee.

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

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

**SECTION 3.9. Certain Duties and Responsibilities of the Property Trustee.** (a) The Property Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration and in the terms of the Securities, and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

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

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities at the time outstanding 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 Declaration;

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if 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 Declaration or adequate indemnity or security against such risk or liability is not reasonably assured to it;

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

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

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

(viii) the Property Trustee shall not be responsible for monitoring the compliance by the Regular Trustees or the Sponsor with their respective duties under this Declaration, nor shall the Property Trustee be liable for the default or misconduct of the Regular Trustees or the Sponsor.

### **SECTION 3.10. Certain Rights of Property Trustee.**

(a) Subject to the provisions of Section 3.9:

(i) the Property Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, security 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 Sponsor or the Regular Trustees contemplated by this Declaration shall be sufficiently evidenced by a Direction or an Officers' Certificate.

(iii) Whenever in the administration of this Declaration the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of an Investment Company solely by means of Rule 3a-5, subject to the requirements of Rule 3a-5, request and rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Regular Trustees.

(iv) The Property 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 Property Trustee may consult with its 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 or suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Sponsor 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 Declaration from any court of competent jurisdiction.

(vi) The Property Trustee shall be under no obligation to exercise any rights or powers vested in it under this Declaration at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including attorneys' fees and expenses) 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 Property Trustee, *provided* that nothing contained in this Section 3.10(a)(vi) shall, however, relieve the Property Trustee, upon the occurrence of an Event of Default, from exercising the rights and powers vested in it by this Declaration.

(vii) The Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, security or other papers or documents, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(viii) The Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Property Trustee shall not be

responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

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

(x) Whenever in the administration of this Declaration the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Property Trustee (i) may request instructions from the Holders of the Securities representing the aggregate liquidation amount of all outstanding Securities of such class required under the terms of the Securities to direct the Property Trustee to enforce such remedy or right or take such action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received and (iii) shall be fully protected in acting in accordance with such instructions.

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

**SECTION 3.11. Delaware Trustee.** Notwithstanding any other provision of this Declaration other than Section 5.2, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Trustees described in this Declaration. Except as set forth in Section 5.2, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Statutory Trust Act.

**SECTION 3.12. Execution of Documents.** Unless otherwise determined by the Regular Trustees, and except as otherwise provided under the Statutory Trust Act, a majority of, or if there are only two, both of the Regular Trustees are authorized to execute on behalf of the Trust any documents which the Regular Trustees have the power and authority to execute pursuant to Section 3.6, *provided* that any listing application prepared by the Sponsor referred to in Section 3.6(b)(iii) may be executed by any Regular Trustee.

**SECTION 3.13. Not Responsible for Recitals or Issuance of Securities.** The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

**SECTION 3.14. Duration of Trust.** The Trust, unless terminated pursuant to the provisions of Article VIII hereof, shall have existence for forty-five (45) years from the Closing Date.

**SECTION 3.15. Mergers.** (a) The Trust may not 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 corporation or other body, except as described in Section 3.15(b) and (c).

(b) The Trust may, with the consent of the Regular Trustees or, if there are more than two, a majority of the Regular Trustees and without the consent of the Property Trustee, the Delaware Trustee or the Holders of the Securities, consolidate, amalgamate, merge with or into, or be replaced by a trust organized as such under the laws of any State; *provided* that:

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

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

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

(ii) the Debenture Issuer expressly appoints a trustee of the Successor Entity which possesses the same powers and duties as the Property Trustee as the Holder of the Subordinated Debentures;

(iii) the Preferred Securities or any Successor Securities thereof are listed, or any such Successor Securities will be listed upon notification of issuance, on any national securities exchange or other organization on which the Preferred Securities are then listed;

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

(v) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect;

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

(vii) prior to such merger, consolidation, amalgamation or replacement, the Sponsor has received an opinion from independent counsel to the Trust experienced in such matters to the effect that:

(A) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect; and

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

(viii) the Sponsor guarantees the obligations of such Successor Entity under the Successor Securities of the Preferred Securities at least to the extent provided by the Preferred Securities Guarantee.

(c) Notwithstanding Section 3.15(b), the Trust shall not consolidate, amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger or replacement would cause the Trust or Successor Entity for United States federal income tax purposes to be classified as other than a grantor trust and each Holder of the Securities not to be treated as owning an undivided beneficial interest in the Subordinated Debentures, except with the consent of Holders of 100% in liquidation amount of the Securities.

## ARTICLE IV

### SPONSOR

**SECTION 4.1. Sponsor's Purchase of Common Securities.** On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust, in an amount equal to approximately 3% of the capital of the Trust at the same time as the Preferred Securities are sold.

**SECTION 4.2. Responsibilities of the Sponsor.** In connection with the issue and sale of the Preferred Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

(a) to prepare for filing by the Trust with the Commission a registration statement on Form S-3 in relation to the Preferred Securities, including any amendments thereto;

(b) to determine the states in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to take any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such states;

(c) to prepare for filing by the Trust an application to the New York Stock Exchange, Inc. or any other national stock exchange or the Nasdaq Stock Market's National Market for listing upon notice of issuance of any Preferred Securities;

(d) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A relating to the registration of the class of Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and

(e) to negotiate the terms of the Underwriting Agreement and, if applicable, the remarketing agreement providing for the sale and, if applicable, remarketing of the Preferred Securities.

## ARTICLE V

### TRUSTEES

**SECTION 5.1. Number of Trustees.** The number of Trustees shall initially be four (4), and:

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

(b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities;

*provided* that in any case, the number of Trustees shall be at least four (4) unless the Trustee that acts as the Property Trustee also acts as the Delaware Trustee pursuant to Section 5.2, in which case the number of Trustees shall be at least three (3).

**SECTION 5.2. Delaware Trustee.** If required by the Statutory Trust Act, one Trustee (the "Delaware Trustee") shall be:

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

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

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

**SECTION 5.3. Property Trustee; Eligibility.** (a) There shall at all times be one Trustee which shall act as Property Trustee and which shall:

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

(ii) be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof or of the District of Columbia, or a corporation or Person permitted by the 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 fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial or District of Columbia authority (if such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.3(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published).

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.3(a), the Property Trustee shall immediately resign in the manner and with the effect set out in Section 5.6(c).

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

**SECTION 5.4. Qualifications of Regular Trustees and Delaware Trustee Generally.** Each Regular Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware Trustee) shall be either a natural person who is at least twenty-one (21) years of age or a legal entity which shall act through one or more Authorized Officers.

**SECTION 5.5. Initial Trustees.** The initial Regular Trustees shall be:

William H. Downey

1201 Walnut

Kansas City, Missouri 64106-2124

Andrea F. Bielsker

1201 Walnut

Kansas City, Missouri 64106-2124

The initial Property Trustee shall be:

The Bank of New York

101 Barclay Street

New York, NY 10286

The initial Delaware Trustee shall be:

The Bank of New York (Delaware)

White Clay Center Route 273

Newark, DE 19711

**SECTION 5.6. Appointment, Removal and Resignation of Trustees.** (a) Subject to Section 5.6(b), Trustees may be appointed or removed without cause at any time:

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

(ii) after the issuance of any Securities, by vote of the Holders of a Majority in liquidation amount of the Common Securities, voting as a class at a meeting of the Holders of the Common Securities.

(b) (i) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.6(a) until a Successor Property Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees and the Sponsor; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.6(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.2 and 5.4 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees and the Sponsor.

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

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

(A) a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust and the Sponsor; or

(B) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the holders of the Securities; and

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

(d) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Property Trustee as the case may be if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.6.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.6 within 60 days after delivery to the Sponsor and the Trust of an instrument of resignation or removal, the retiring Property Trustee or Delaware Trustee, as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

**SECTION 5.7. Vacancies among Trustees.** If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Regular Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.6.

**SECTION 5.8. Effect of Vacancies.** The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee, or any one of them, shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur, until such vacancy is filled by the appointment of a Regular Trustee in accordance with Section 5.6, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.



**SECTION 5.9. Meetings.** Meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meetings of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Regular Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Regular Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, *provided* that a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees. In the event there is only one Regular Trustee, any action of such Regular Trustee shall be evidenced by a written consent of such Regular Trustee.

**SECTION 5.10. Delegation of Power.** (a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.6, including any registration statement or amendment thereto filed with the Commission or making any other governmental filing.

(b) The Regular Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular 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.

## ARTICLE VI

### DISTRIBUTIONS

**SECTION 6.1. Distributions.** (a) Holders shall receive Distributions in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Preferred Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Debenture Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Interest (as defined in the Indenture)), premium and principal on the Subordinated Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose, to make a Distribution of the Payment Amount to the Holders.

(b) The Debenture Issuer has the right under the Indenture to defer payments of interest on the Subordinated Debentures by extending the interest period from time to time on the Subordinated Debentures (an "Extension Period") which, if exercised, would defer distributions on the Preferred Securities during any Extension Period. The payment of such distributions, together with any interest thereon, will be distributed to the Holders of Trust Securities as received at the end of any Extension Period.

## ARTICLE VII

### ISSUANCE OF SECURITIES

**SECTION 7.1. General Provisions Regarding Securities.** (a) The Regular Trustees shall, on behalf of the Trust, issue one class of preferred securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit A and incorporated herein by reference (the "Preferred Securities"), and one class of common securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit A and incorporated herein by reference (the "Common Securities"). The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities.

(b) The Securities shall be signed on behalf of the Trust by the Regular Trustees (or, if there are more than two Regular Trustees, by any two of the Regular Trustees). Such signatures may be the manual or facsimile signatures of the present or any future Regular Trustee. Typographical and other minor errors or defects in any such reproduction of any such signature shall not affect the validity of any Security. In case any Regular Trustee of the Trust who shall have signed any of the Securities shall cease to be such Regular Trustee before the Security so signed shall be delivered by the Trust, such Security nevertheless may be delivered as though the person who signed such Security had not ceased to be such Regular Trustee; and any Security may be signed on behalf of the Trust by such persons as, at the actual date of the execution of such Security, are the Regular Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Regular Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as

evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage.

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

(d) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable, subject to Section 10.1(b) with respect to the Common Securities.

(e) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

## ARTICLE VIII

### EARLY TERMINATION OF TRUST

**SECTION 8.1. Early Termination of Trust.** (a) The Trust shall terminate:

- (i) upon the occurrence of a Bankruptcy Event of the Holder of the Common Securities or the Sponsor;
- (ii) upon the filing of a certificate of dissolution or its equivalent with respect to the Holder of the Common Securities or the Sponsor, the filing of a certificate of cancellation with respect to the Trust or the revocation of the charter of the Holder of the Common Securities or of the Sponsor and the expiration of ninety (90) days after the date of revocation without a reinstatement thereof;
- (iii) upon the entry of a decree of judicial dissolution of the Holder of the Common Securities, the Sponsor or the Trust;
- (iv) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;
- (v) upon the dissolution of the Trust in accordance with the terms of the Securities and pursuant to which all of the Subordinated Debentures shall have been distributed to the Holders of Securities in exchange for all of the Securities; or
- (vi) upon delivery of written direction to the Property Trustee by the Sponsor at any time (which direction is wholly optional and within the discretion of the Sponsor) to dissolve the Trust and distribute the Subordinated Debentures to the Holders of the Securities in accordance with Section 3 of Exhibit A hereto.

(b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a), the Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

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

## ARTICLE IX

### TRANSFER OF INTERESTS

**SECTION 9.1. Transfer of Securities.** (a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

(b) Subject to this Article IX, Preferred Securities shall be freely transferable.

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party of the Sponsor, *provided* that any such transfer is subject to the condition precedent that the transferor obtain the written opinion of nationally recognized independent counsel experienced in such matters that such transfer would not cause more than an insubstantial risk that:

- (i) the Trust would not be classified for United States federal income tax purposes as a grantor trust and each Holder of Securities would not be treated as owning an undivided beneficial interest in the Subordinated Debentures; and

(ii) the Trust would be an Investment Company or the transferee would be an Investment Company if the transferee was not an Investment Company before the transfer.

**SECTION 9.2. Transfer of Certificates.** The Regular Trustees shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Regular Trustees may require) in respect of any tax or other government charges which may be imposed in relation to it. Upon surrender for registration of transfer of any Certificate, the Regular Trustees shall cause one or more new Certificates to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Regular Trustees duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Regular Trustees. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration and the documents incorporated by reference herein.

**SECTION 9.3. Deemed Security Holders.** The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trustees shall have actual or other notice thereof.

**SECTION 9.4. Book Entry Interests.** Unless otherwise specified in the terms of the Preferred Securities, the Preferred Securities Certificates, on original issuance, will be issued in the form of one or more, fully registered, global Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Preferred Security Beneficial Owner will receive a definitive Preferred Security Certificate representing such Preferred Security Beneficial Owner's interests in such Global Certificates, except as provided in Section 9.7. Unless and until definitive, fully registered Preferred Security Certificates (the "Definitive Preferred Security Certificates") have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.7:

(a) the provisions of this Section 9.4 shall be in full force and effect;

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

(c) to the extent that the provisions of this Section 9.4 conflict with any other provisions of this Declaration, the provisions of this Section 9.4 shall control; and

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

**SECTION 9.5. Notices to Clearing Agency.** Whenever a notice or other communication to the Preferred Security Holders is required under this Declaration, unless and until Definitive Preferred Security Certificates shall have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.7, the Regular Trustees shall give all such notices and communications specified herein to be given to the Preferred Security Holders to the Clearing Agency, and shall have no notice obligations to the Preferred Security Beneficial Owners.

**SECTION 9.6. Appointment of Successor Clearing Agency.** If any Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Preferred Securities.

**SECTION 9.7. Definitive Preferred Security Certificates.** If:

(a) a Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities and a successor Clearing Agency is not appointed within ninety (90) days after such discontinuance pursuant to Section 9.6; or

(b) the Regular Trustees elect, after consultation with the Sponsor, to terminate the book entry system through the Clearing Agency with respect to the Preferred Securities,

then:

(c) Definitive Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Preferred Securities; and

(d) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees shall cause Definitive Preferred Security Certificates to be delivered to Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on, and shall be protected in relying on, such instructions. The Definitive Preferred Security Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which Preferred Securities may be listed, or to conform to usage.

**SECTION 9.8. Mutilated, Destroyed, Lost or Stolen Certificates. If:**

(a) any mutilated Certificates should be surrendered to the Regular Trustees, or if the Regular Trustees shall receive evidence to their satisfaction of the destruction, loss or theft of any Certificate; and

(b) there shall be delivered to the Regular Trustees such security or indemnity as may be required by them to keep each of them harmless,

then in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any two Regular Trustees on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.8, the Regular Trustees 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 Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

**ARTICLE X**

**LIMITATION OF LIABILITY OF**

**HOLDERS OF SECURITIES, TRUSTEES OR OTHERS**

**SECTION 10.1. Liability.** (a) Except as expressly set forth in this Declaration, the Subordinated Debentures, the Preferred Securities Guarantee and the terms of the Securities, the Sponsor shall not be:

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

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

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

(c) The Holders, 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.

**SECTION 10.2. Exculpation.** (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence (or, in the case of the Property Trustee, pursuant to Section 3.9, negligence) or willful misconduct with respect to such acts or omissions.

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

**SECTION 10.3. Fiduciary Duty.** (a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

- (i) whenever a conflict of interest exists or arises between an Indemnified Person and Covered Persons; or
- (ii) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

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

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

- (i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of, or factors affecting, the Trust or any other Person; or
- (ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

**SECTION 10.4. Indemnification.** (a) To the fullest extent permitted by applicable law, the Sponsor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage, liability, tax, penalty, expense or claim incurred by such Indemnified Person by reason of the creation, operation or termination of the Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, pursuant to Section 3.9, negligence) or willful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Sponsor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Sponsor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 10.4(a).

(c) The rights to indemnification set forth in this Section 10.4 shall survive the termination of this Declaration and the resignation or removal of any Trustee.

**SECTION 10.5. Outside Businesses.** Any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

## ACCOUNTING

**SECTION 11.1. Fiscal Year.** The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

**SECTION 11.2. Certain Accounting Matters.** (a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year of the Trust by a firm of independent certified public accountants selected by the Regular Trustees.

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

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

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

**SECTION 11.3. Banking.** The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; *provided, however,* that all payments of funds in respect of the Subordinated Debentures held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Regular Trustees; *provided, however,* that the Property Trustee shall designate the signatories for the Property Trustee Account.

**SECTION 11.4. Withholding.** The Trust and the Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Regular Trustee(s) shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed over-withholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XII

### AMENDMENTS AND MEETINGS

**SECTION 12.1. Amendments.** (a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may be amended by, and only by, a written instrument approved and executed by the Regular Trustees (or, if there are more than two Regular Trustees, a majority of the Regular Trustees); *provided, however,* that:

(i) no amendment shall be made, and any such purported amendment shall be void and ineffective:

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

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

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

(B) an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(ii) no amendment shall be made, and any such purported amendment shall be void and ineffective, to the extent the result thereof would be to

(A) cause the Trust not to be characterized for purposes of United States federal income taxation as a grantor trust and each Holder of Securities not to be treated as owning an undivided beneficial interest in the Subordinated Debentures, as evidenced by an Opinion of Counsel to the effect that such amendment shall not result in the foregoing;

(B) affect adversely the rights, powers, duties, obligations or immunities of the Property Trustee or the Delaware Trustee; or

(C) cause the Trust to be deemed to be an Investment Company which is required to be registered under the Investment Company Act;

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

(iv) Section 9.1(c) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities;

(v) Article IV shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities; and

(vi) the rights of the holders of the Common Securities under Article V to increase or decrease the number of, and appoint and remove, Trustees shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities.

(b) Notwithstanding Section 12.1(a)(iii), this Declaration may be amended without the consent of the Holders of the Securities to:

(i) cure any ambiguity;

(ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration;

(iii) to add to the covenants, restrictions or obligations of the Sponsor; and

(iv) to conform to any change in Rule 3a-5 or written change in interpretation or application of Rule 3a-5 by any legislative body, court, government agency or regulatory authority which amendment does not have a material adverse effect on the rights, preferences or privileges of the Holders.

**SECTION 12.2. Meetings of the Holders of Securities; Action by Written Consent.** (a) Meetings of the Holders of any class of Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. The Regular Trustees shall call a meeting of such class of Holders, if directed to do so by the Holders of at least 10% in liquidation amount of Securities of such class. Such direction shall be given by delivering to the Regular Trustees one or more calls in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Security Certificates held by the Holders of Securities exercising the right to call a meeting and only those specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

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

(i) Notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least seven (7) days and not more than sixty (60) days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at

a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in liquidation amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballots submitted to the Holders of Securities for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees.

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

(iii) Each meeting of the Holders of the Securities shall be conducted by the Regular Trustees or by such other Person that the Regular Trustees may designate.

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

## ARTICLE XIII

### REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

**SECTION 13.1. Representations and Warranties of Property Trustee.** The Trustee which acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(a) The Property Trustee is a banking corporation duly organized under the laws of New York, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration.

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

(c) The execution, delivery and performance of this Declaration by the Property Trustee does not conflict with or constitute a breach of the organizational certificate or By-Laws of the Property Trustee.

(d) No consent, approval or authorization of, or registration with or notice to, any State or Federal banking authority is required for the execution, delivery or performance by the Property Trustee of this Declaration.

**SECTION 13.2. Representations and Warranties of Delaware Trustee.** The Delaware Trustee represents and warrants to the Trust and the Sponsor at the date of this Declaration, that the Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and this Declaration. This Declaration under Delaware law constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

## ARTICLE XIV



## MISCELLANEOUS

**SECTION 14.1. Notices.** All notices provided for in this Declaration 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 Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Holders of the Securities):

KCPL FINANCING \_\_\_

c/o Kansas City Power & Light Company

1201 Walnut

Kansas City, Missouri 64106-2124

Attention: Chief Financial Officer

Facsimile: 816-556-2992

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

The Bank of New York

101 Barclay Street

New York, NY 10286

Attention: Corporate Trust Administration

Facsimile: \_\_\_\_\_

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

The Bank of New York (Delaware)

White Clay Center Route 273

Newark, Delaware 19711

Facsimile: \_\_\_\_\_

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

Kansas City Power & Light Company

1201 Walnut

Kansas City, Missouri 64106-2124

Attention: Chief Financial Officer

Facsimile: 816-556-2992

(d) if given to any other Holder, 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 14.2. Governing Law.** This Declaration and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

**SECTION 14.3. Intention of the Parties.** It is the intention of the parties hereto that the Trust not be characterized for United States federal income tax purposes as an association taxable as a corporation or a partnership but rather, that the Trust be characterized as a grantor trust or otherwise in a manner such that each Holder of Securities be treated as

owning an undivided beneficial interest in the Subordinated Debentures. The provisions of this Declaration shall be interpreted to further this intention of the parties.

**SECTION 14.4. Headings.** Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

**SECTION 14.5. Successors and Assigns.** Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

**SECTION 14.6. Partial Enforceability.** If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**SECTION 14.7. Counterparts.** This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

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

\_\_\_\_\_  
William H. Downey  
as Regular Trustee

\_\_\_\_\_  
Andrea F. Bielsker  
as Regular Trustee

THE BANK OF NEW YORK  
Not in its individual capacity but solely as Property  
Trustee

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

Name:  
Title:

THE BANK OF NEW YORK (DELAWARE)  
Not in its individual capacity  
but solely as Delaware Trustee

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

Name:  
Title:

KANSAS CITY POWER & LIGHT COMPANY  
as Sponsor

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

Name:  
Title:

## TERMS OF

\_\_\_\_\_% TAXABLE FLEXIBLE TRUST PREFERRED SECURITIES

\_\_\_\_\_% Trust Common Securities

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust of KCPL Financing \_\_\_\_ dated as of \_\_\_\_\_, 2003 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration or, if not defined in such Declaration, as defined in the Prospectus referred to below):

**1. Designation and Number.**

**(a) Preferred Securities.** Preferred Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of \_\_\_\_\_ million dollars (\$ \_\_\_\_\_) and a liquidation amount with respect to the assets of the Trust of \$ \_\_\_\_ per Preferred Security, are hereby designated for the purposes of identification only as "\_\_\_\_\_% Taxable Flexible Trust Preferred Securities" (the "Preferred Securities"). The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

**(b) Common Securities.** Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of \_\_\_\_\_ million dollars (\$ \_\_\_\_\_) and a liquidation amount with respect to the assets of the Trust of \$ \_\_\_\_ per Common Security, are hereby designated for the purposes of identification only as "\_\_\_\_\_% Trust Common Securities" (the "Common Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Annex II, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

**2. Distributions.** (a) Distributions payable on each Security will be fixed at a rate per annum of \_\_\_\_% (the "Coupon Rate") of the stated liquidation amount of \$ \_\_\_\_ per Security, such rate being the rate of interest payable on the Subordinated Debentures to be held by the Property Trustee. Distributions in arrears will bear interest compounded \_\_\_\_\_ at the Coupon Rate to the extent permitted by applicable law. The term "Distributions," as used herein, includes any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Subordinated Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period, on the basis of the actual number of days elapsed in such a 90-day quarter.

(b) Distributions on the Securities will be cumulative, will accrue from \_\_\_\_\_, 2003 and will be payable \_\_\_\_\_ in arrears, on March 31, June 30, September 30, and December 31 of each year, commencing on \_\_\_\_\_, 2003, except as otherwise described below. The Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Subordinated Debentures for a period not exceeding twenty consecutive quarters (each such period, an "Extension Period") and, as a consequence of such extension, Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded quarterly during any such Extension Period. Prior to the termination of any such Extension Period, the Debenture Issuer may further extend such Extension Period; *provided* that such Extension Period, together with all such previous and further extensions thereof, may not exceed twenty consecutive quarters or extend beyond the maturity of the Subordinated Debentures. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the first record date after the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements.

(c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates. While the Preferred Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant payment dates which payment dates correspond to the interest payment dates on the Subordinated Debentures. Subject to any applicable laws and regulations and the provisions of the Declaration, each such payment in respect of the Preferred Securities will be made as described under the heading "Description of the Preferred Securities -- Book-Entry Only Issuance -- The Depository Trust Company" in the Prospectus dated \_\_\_\_\_, as supplemented by the Prospectus Supplement dated \_\_\_\_\_, 2003 (the "Prospectus") of the Trust included in the Registration Statement on Form S-3 of the Sponsor and the Trust. The

relevant record dates for the Common Securities, and if the Preferred Securities shall not continue to remain in book-entry-only form, the relevant record dates for the Preferred Securities, shall conform to the rules of any securities exchange on which the securities are listed and, if none, shall be selected by the Regular Trustees, which dates shall be at least one Business Day but less than 60 Business Days before the relevant payment dates which payment dates correspond to the interest payment dates on the Subordinated Debentures. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Debenture Issuer having failed to make a payment under the Subordinated Debentures, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

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

**3. Liquidation Distribution Upon Dissolution.** In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Securities on the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive out of the assets of the Trust available for distribution to Holders of Securities, after paying or making reasonable provision to pay all claims and obligations of the Trust in accordance with Section 3808(e) of the Statutory Trust Act, an amount equal to the aggregate of the stated liquidation amount of \$\_\_\_ per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination, Subordinated Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Securities, with an interest rate equal to the Coupon Rate of, and bearing a accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on, such Securities, shall be distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities.

If, upon any such dissolution, 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 the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis.

**4. Redemption.** (a) Upon the repayment of the Subordinated Debentures in whole or in part, whether at maturity or upon acceleration, redemption or otherwise, the proceeds from such repayment or payment shall be simultaneously applied to redeem Securities having an aggregate stated liquidation amount equal to the aggregate principal amount of the Subordinated Debentures so repaid or redeemed at a redemption price of \$\_\_\_ per Security plus an amount equal to accrued and unpaid Distributions thereon at the date of the redemption, payable in cash (the "Redemption Price"). Holders will be given not less than 30 nor more than 60 days notice of such redemption except in the case of payments upon maturity.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Preferred Securities will be redeemed Pro Rata and the Preferred Securities to be redeemed will be as described in Section 4(f) (ii) below.

(c) If, at any time, a Tax Event (as defined below) shall occur and be continuing, the Regular Trustees, upon not less than 30 nor more than 60 days notice, may redeem the Securities in whole or in part for cash within 90 days following the occurrence of such Tax Event (the "90 Day Period") at the Redemption Price on a Pro Rata basis *provided*, that, if at the time there is available to the Trust the opportunity to eliminate, within the 90 Day Period, the Tax Event by taking some ministerial action ("Ministerial Action"), such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Sponsor, the Trust, the Debenture Issuer or the Holders of the Securities, the Trust will pursue such Ministerial Action in lieu of redemption.

**"Tax Event"** means that the Regular Trustees shall have received an opinion from independent tax counsel experienced in such matters (a "Redemption Tax Opinion") to the effect that, on or after the latest date of the prospectus relating to the Preferred Securities, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority therefor or therein, or (b) any amendment to, or change in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or announced or which interpretation or pronouncement is issued or announced or which action is taken, in each case on or after the date of the Prospectus, there is more than an insubstantial risk that interest payable by the Debenture Issuer to the Trust on the Subordinated Debentures is not, or within 90 days of the date thereof will not be, deductible, in whole or in part, by the Debenture Issuer for United States federal income tax purposes.

(d) The Trust may not redeem fewer than all the outstanding Securities unless all accrued and unpaid Distributions have been paid on all Securities for all quarterly Distribution periods terminating on or before the date of redemption.

**5. Distribution of Subordinated Debentures in Exchange for Securities.** (a) On and from the date fixed by the Trustees for any distribution of Subordinated Debentures upon dissolution of the Trust: (i) the Securities will no longer be deemed to be outstanding, (ii) The Depository Trust Company (the "Depository") or its nominee (or any successor Clearing Agency or its nominee), as the record Holder of the Preferred Securities, will receive a registered global certificate or certificates representing the Subordinated Debentures to be delivered upon such distribution and any certificates representing Securities, except for certificates representing Preferred Securities held by the Depository or its nominee (or any successor Clearing Agency or its nominee), will be deemed to represent beneficial interests in the Subordinated Debentures having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on, such Securities until such certificates are presented to the Debenture Issuer or its agent for transfer or reissue.

(b) If the Subordinated Debentures are distributed to holders of the Securities, pursuant to the terms of the Indenture, the Debenture Issuer will use its best efforts to have the Subordinated Debentures listed on the New York Stock Exchange or on such other exchange as the Preferred Securities were listed immediately prior to the distribution of the Subordinated Debentures.

**6. Redemption or Distribution Procedures.** (a) Notice of any redemption of, or notice of distribution of Subordinated Debentures in exchange for, the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Subordinated Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 6(a), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(b) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Preferred Securities; *provided* that if, as a result of such Pro Rata redemption, Clearing Agency Participants would hold fractional interests in the Preferred Securities, the Depository will adjust the amount of the interest of each Clearing Agency Participant to be redeemed to avoid such fractional interests.

(c) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Subordinated Debentures are redeemed as set out in this Section 4 (which notice will be irrevocable), then (i) while the Preferred Securities are in book entry only form, with respect to the Preferred Securities, by 12:00 noon, New York City time, on the redemption date, *provided* that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Subordinated Debentures, the Property Trustee will deposit irrevocably with the Depository or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Preferred Securities and will give the Depository irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities, and (ii) if the Preferred Securities are issued in definitive form, with respect to the Preferred Securities, and with respect to the Common Securities, *provided* that the Debenture Issuer has paid the Property Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Subordinated Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds have been deposited as required, if applicable, then immediately prior to the close of business on the date of such deposit, or on the redemption date, as applicable, all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Regular Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities which have been so called for redemption. If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of Securities is improperly withheld or refused and not paid either by the Property Trustee or by the Sponsor as Guarantor pursuant to the Preferred Securities Guarantee, Distributions on such Securities will continue to accrue, from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(d) Redemption/Distribution Notices shall be sent to (i) in respect of the Preferred Securities, the Depository or its nominee (or any successor Clearing Agency or its nominee) if Global Certificates have been issued or if Definitive Preferred Security Certificates have been issued, to the Holders thereof, and (ii) in respect of the Common Securities, to the Holders thereof.

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

**7. Voting Rights - Preferred Securities.** (a) Except as provided under Sections 7(b) and 9 and as otherwise required by law and the Declaration, the Holders of the Preferred Securities will have no voting rights.

(b) The Holders of a Majority in liquidation amount of the Preferred Securities, voting separately as a class, may direct 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 the Declaration, including (i) directing 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 the Subordinated Debentures, (ii) waive any past default and its consequences that are waivable under the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Subordinated Debentures shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture or the Subordinated Debentures, where such consent shall be required, *provided, however*, that where a consent under the Indenture would require the consent of greater than a majority of the Holders in principal amount of Subordinated Debentures affected thereby (a "Super-Majority"), the Property Trustee may only give such consent at the direction of the Holders of at least the proportion in liquidation amount of the Preferred Securities which the relevant Super-Majority represents of the aggregate principal amount of the Subordinated Debentures. The Property Trustee shall not take any action in accordance with the directions of the Holders of the Preferred Securities under this paragraph unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that, for the purposes of United States federal income tax, the Trust will not be classified as other than a grantor trust on account of such action and that each Holder of Securities will continue to be treated as owning an undivided beneficial interest in the Subordinated Debentures on account of such action. If the Property Trustee fails to enforce its rights under the Declaration, any Holder of Preferred Securities may institute a legal proceeding directly against any Person to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person.

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

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

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities that are owned by the Sponsor, or by any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Sponsor, shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

**8. Voting Rights - Common Securities.** (a) Except as provided under Section 8(b) and (c) and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with Article V of the Declaration, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Only after the Event of Default with respect to the Preferred Securities has been cured, waived or otherwise eliminated, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct 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 the Declaration, including (i) directing 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 the Subordinated Debentures, (ii) waive any past default and its consequences that is waivable under Section 6.06 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Subordinated Debentures shall be due and payable, or (iv) consent to any amendment, modification or termination of the Indenture or the Subordinated Debentures, where such consent shall be required, *provided, however*, that where a consent under the Indenture would require the consent of a Super-Majority, the Property Trustee may only give such consent at the direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super-Majority represents of the aggregate principal amount of the Subordinated Debentures. The Property Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Property Trustee has obtained an opinion of independent tax counsel to the effect that, for the purposes of United States federal income tax, the Trust will not be classified as other than a grantor trust on account of such action and that each Holder of Securities will continue to be treated as owning an undivided beneficial interest in the Subordinated Debentures on account of such action. If

the Property Trustee fails to enforce its rights under the Declaration, any Holder of Common Securities may institute a legal proceeding directly against any Person to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person.

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

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

**9. Amendments.** If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.1 of the Declaration, then the Holders of outstanding Securities, as a single class, will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least 66-2/3% in liquidation amount of the Securities affected thereby, provided that a reduction of the aggregate liquidation amount or the distribution rate, or a change in the payment dates or maturities of the Preferred Securities shall not be permitted without the consent of each holder of the Preferred Securities. In the event any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities.

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

**11. Ranking.** The Preferred Securities rank *pari passu* and payment thereon shall be made Pro Rata with the Common Securities except that when an Event of Default occurs and is continuing, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Preferred Securities.

**12. Listing.** The Regular Trustees shall use their best efforts to cause the Preferred Securities to be listed for quotation on the New York Stock Exchange, Inc.

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

**14. No Preemptive Rights.** The Holders of the Securities shall have no preemptive rights to subscribe for any additional Securities.

**15. Miscellaneous.** These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration and the Preferred Securities Guarantee to a Holder without charge on written request to the Sponsor at its principal place of business.

## Annex I

### Form of Preferred Security Certificate

[IF THE PREFERRED SECURITY IS TO BE A GLOBAL CERTIFICATE INSERT - This Preferred Security is a Global Certificate within the meaning of the Declaration hereinafter referred to and is registered in the name of The Depository

Trust Company (the "Depository") or a nominee of the Depository. This Preferred Security is exchangeable for Preferred Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Declaration and no transfer of this Preferred Security as a whole (except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Preferred Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the Trust or its agent for registration of transfer, exchange or payment, and any Preferred Security issued is registered in the name of Cede & Co. or such other name as is requested by an authorized representative of The Depository Trust Company and any payment hereon is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

Certificate Number Number of Preferred Securities

CUSIP NO.

Certificate Evidencing Preferred Securities

of

KCPL FINANCING \_\_

Preferred Securities

(Liquidation Amount \$\_\_ per Preferred Security)

KCPL FINANCING \_\_, a statutory trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_ (the "Holder") is the registered owner of preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the \_\_\_% Taxable Flexible Trust Preferred Securities (liquidation amount \$\_\_ per Preferred Security) (the "Preferred Securities"). The Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of \_\_\_\_\_, 2003, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Preferred Securities as set forth in Exhibit A to the Declaration. Capitalized terms used herein but not defined herein shall have the respective meanings given them in the Declaration. The Holder is entitled to the benefits of the Preferred Securities Guarantee to the extent provided therein. The Trust will provide a copy of the Declaration and the Preferred Securities Guarantee to the Holder without charge upon written request to the Trust at its principal place of business.

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

By acceptance, the Holder agrees to treat the Subordinated Debentures as indebtedness and the Preferred Securities as evidence of indirect beneficial ownership in the Subordinated Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ as Trustee

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

\_\_\_\_\_ as Trustee

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

\_\_\_\_\_ as Trustee

\_\_\_\_\_ as Trustee



ASSIGNMENT

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

(Insert address and zip code of assignee)

and irrevocably appoints \_\_\_\_\_ agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

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

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

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

**Annex II**

**Form of Common Security Certificate**

Certificate Number \_\_\_\_\_ Number of Common Securities \_\_\_\_\_

Certificate Evidencing Common Securities

of

KCPL FINANCING \_\_\_\_\_

Common Securities

(Liquidation Amount \$\_\_\_\_\_ per Common Security)

KCPL FINANCING \_\_\_, a statutory trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_ (the "Holder") is the registered owner of common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the \_\_\_\_\_% Trust Originated Common Securities (liquidation amount \$\_\_\_\_\_ per Common Security) (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of \_\_\_\_\_, 2003, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth in Exhibit A to the Declaration. Capitalized terms used herein but not defined herein shall have the respective meanings given them in the Declaration. The Holder is entitled to the benefits of the Common Securities Guarantee to the extent provided therein. The Trust will provide a copy of the Declaration and the Common Securities Guarantee to the Holder without charge upon written request to the Trust at its principal place of business.

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

By acceptance, the Holder agrees to treat the Subordinated Debentures as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Subordinated Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

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

\_\_\_\_\_  
as Trustee

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

\_\_\_\_\_  
as Trustee

\_\_\_\_\_  
as Trustee

\_\_\_\_\_

**ASSIGNMENT**

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

(Insert address and zip code of assignee)

and irrevocably appoints \_\_\_\_\_ agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

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

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

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

Exhibit B

**AGREEMENT AS TO EXPENSES AND LIABILITIES**

THIS AGREEMENT AS TO EXPENSES AND LIABILITIES (the "Agreement") is made as of \_\_\_\_\_, 2003, between Kansas City Power & Light Company, a Missouri corporation (the "Company"), and KCPL Financing \_\_\_\_, a Delaware statutory trust (the "Trust").

WHEREAS, the Trust intends to issue its Common Securities (the "Common Securities") to and receive Subordinated Debentures from the Company and to issue and sell Taxable Flexible 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 \_\_\_\_\_, 2003 as the same may be amended from time to time (the "Trust Agreement"); and

WHEREAS, the Company is the issuer of the Subordinated 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 will be made in reliance upon the execution and delivery of this Agreement, the Company 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 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 indebtedness, expenses or liabilities of the Trust, other than obligations of the Trust to pay to holders of any Preferred Securities or other similar interests in the Trust the amounts due such holders pursuant to the terms of the Preferred Securities or such other similar interests, as the case may be. This Agreement is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

**Section 1.2 Term of Agreement.** This Agreement shall terminate and be of no further force and effect upon the date on which there are no Beneficiaries remaining; provided, however, that this Agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any holder of Preferred Securities or any Beneficiary must restore payment of any sums paid under the Preferred Securities, under any Obligation, under the Guarantee Agreement dated the date hereof by the Company and The Bank of New York, 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 against receipt therefor 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), to-wit:

KCPL Financing \_\_  
c/o The Bank of New York  
101 Barclay Street, 8<sup>th</sup> Floor  
New York, NY 10286  
Facsimile No.: (212) 815-5704  
Attention: Corporate Trust Administrator

Kansas City Power & Light Company  
1201 Walnut, 21<sup>st</sup> Floor  
Kansas City, MO 64106

Kansas City, MO 64108

Facsimile No.: (816) 556-2924  
Attention: Chief Financial Officer

Section 2.4 **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

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

KANSAS CITY POWER & LIGHT  
COMPANY

By



Jeanie Sell Latz

Corporate Secretary

KCPL FINANCING \_\_\_\_

By



Andrea F. Bielsker

as Trustee

=====

KANSAS CITY POWER & LIGHT COMPANY

AND

THE BANK OF NEW YORK,

Trustee

-----

FORM OF INDENTURE

(FOR SENIOR DEBT SECURITIES)

Dated as of \_\_\_\_\_, 2003

=====

CROSS REFERENCE SHEET SHOWING THE LOCATION IN THE INDENTURE OF THE PROVISIONS INSERTED CORRELATIVE TO SECTIONS 310 THROUGH 318(a), INCLUSIVE, OF THE TRUST INDENTURE ACT OF 1939

<u>Section of Act</u>	<u>Indenture Section</u>
310(a)(1) .....	9.09
(a)(2) .....	9.09
(a)(3) .....	Not Applicable
(a)(4) .....	Not Applicable
(a)(5) .....	9.09
(b) .....	9.08
(c) .....	Not Applicable
311(a) .....	9.14
(b) .....	9.14
(c) .....	Not Applicable
312(a) .....	7.01 and 7.02(a)
(b) .....	7.02(b)
(c) .....	7.02(c)
313(a) .....	7.04(a)

(b)	7.04(b)
(c)	7.04(d)
(d)	7.04(c)
314(a)	7.03 and 6.06
(b)	6.05
(c)(1)	1.03 and 15.05
(c)(2)	1.03 and 15.05
(c)(3)	Not Applicable
(d)	1.03 and 4.06
(e)	15.05(b)
(f)	Not Applicable
315(a)	9.01
(b)	8.08
(c)	9.01(a)
(d)	9.01(b)
(e)	8.09
316(a)	8.07 and 10.04
(b)	8.04(b) and 13.02
(c)	10.06
317(a)(1)	8.02(b)
(a)(2)	8.02(c)
(b)	5.02 and 6.04
318(a)	15.08

NOTE: This Cross Reference Sheet is not, for any purpose, deemed to be a part of the Indenture.

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WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (the "Notes"), to be issued in one or more series as in this Indenture provided; and

WHEREAS, all acts and things necessary to make this Indenture a valid agreement according to its terms have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the premises, of the purchase and acceptance of the Notes by the holders thereof and of the sum of \$1 duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Notes or any series thereof, as follows:

## **ARTICLE I**

### **DEFINITIONS**

#### Section 1.01 GENERAL.

(a) The terms defined in this Article I (whether or not capitalized and except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto or Company Order (as hereinafter defined) shall have the respective meanings specified in this Article I.

(b) All accounting terms used herein and not expressly defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date of such computation; PROVIDED, that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Company.

#### Section 1.02 TRUST INDENTURE ACT.

(a) Whenever this Indenture refers to a provision of the Trust Indenture Act of 1939 (the "TIA"), such provision is incorporated by reference in and made a part of this Indenture.

(b) Unless otherwise indicated, all terms used in this Indenture that are defined by the TIA, defined by the TIA by reference to another statute or defined by a rule of the

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Commission under the TIA shall have the meanings assigned to them in the TIA or such statute or rule as in force on the date of execution of this Indenture.

(c) The Company and the Trustee agree to comply with the TIA notwithstanding any exemption that may be available thereunder.

#### Section 1.03 DEFINITIONS. For purposes of this Indenture, the following terms shall have the following meanings.

"AUTHENTICATING AGENT" shall mean any agent of the Trustee which shall be appointed and acting pursuant to Section 9.15 hereof.

"AUTHORIZED AGENT" shall mean any agent of the Company designated as such by an Officers' Certificate delivered to the Trustee.

"BOARD OF DIRECTORS" shall mean the Board of Directors of the Company or the Executive Committee of such Board or any other duly authorized committee of such Board.

"BOARD RESOLUTION" shall mean a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"BUSINESS DAY" shall mean any day other than a day on which banking institutions in New York, New York are authorized or required by law to close.

"COMMISSION" shall mean the United States Securities and Exchange Commission, or if at any time hereafter the Commission is not existing or performing the duties now assigned to it under the TIA, then the body performing such duties.

"COMPANY" shall mean the corporation named as the "Company" in the first paragraph of this Indenture, and its successors and assigns permitted hereunder.

"COMPANY ORDER" shall mean a written order or certificate signed in the name of the Company by one of the Chairman, the President, any Vice President, the Treasurer or an Assistant Treasurer of the Company, and delivered to the Trustee. At the Company's option, a Company Order may take the form of a supplemental indenture to this Indenture.

"CORPORATE TRUST OFFICE OF THE TRUSTEE", or other similar term, shall mean the corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be principally administered, which officer is presently located at 101 Barclay Street, New York, New York 10286.

"DEBT" shall mean any outstanding funded obligations of the Company for money borrowed, whether or not evidenced by notes, debentures, bonds or other securities, reimbursement obligations under letters of credit, or guarantees of any such obligations issued by another Person.

"DEPOSITARY" shall mean, unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, The Depository Trust Company, New York, New York ("DTC"), or any successor thereto registered and qualified as a clearing agency under the Securities Exchange Act of 1934, or other applicable statute or regulation.

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"EVENT OF DEFAULT" shall mean any event specified in Section 8.01 hereof, continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

"GLOBAL NOTE" shall mean a Note that, pursuant to Section 2.05 hereof, is delivered to the Depository or pursuant to the instructions of the Depository and that shall be registered in the name of the Depository or its nominee.

"HOLDER", "HOLDER OF NOTES" or "NOTEHOLDER" shall mean any Person in whose name at the time a particular Note is registered on the books of the Trustee kept for that purpose in accordance with the terms hereof.

"INDENTURE" shall mean this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented, and shall include the terms and provisions of a particular series of Notes established pursuant to Section 2.05 hereof.

"INTEREST PAYMENT DATE", when used with respect to any Note, shall mean (a) each date designated as such for the payment of interest on such Note specified in a Company Order pursuant to Section 2.05 hereof (provided that the first Interest Payment Date for such Note, the Original Issue Date of which is after a Regular Record Date but prior to the respective Interest Payment Date, shall be the Interest Payment Date following the next succeeding Regular Record Date), (b) a date of Maturity of such Note and (c) only with respect to defaulted interest on such Note, the date established by the Trustee for the payment of such defaulted interest pursuant to Section 2.11 hereof.

"MATURITY," when used with respect to any Note, shall mean the date on which the principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof or by declaration of acceleration, redemption or otherwise.

"NOTE" or "NOTES" has the meaning stated in the first recital of this Indenture and more particularly means any note or notes, as the case may be, authenticated and delivered under this Indenture, including any Global Note.

"OFFICERS' CERTIFICATE" when used with respect to the Company, shall mean a certificate signed by one of the Chairman, the President, any Vice President, and by the Treasurer, any Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company; provided, that no individual shall be entitled to sign in more than one capacity.

"OPINION OF COUNSEL" shall mean an opinion in writing signed by legal counsel, who may be an employee of the Company, meeting the applicable requirements of Section 15.05 hereof. If the Indenture requires the delivery of an Opinion of Counsel to the Trustee, the text and substance of which has been previously delivered to the Trustee, the Company may satisfy such requirement by the delivery by the legal counsel that delivered such previous Opinion of Counsel of a letter to the Trustee to the effect that the Trustee may rely on such previous Opinion of Counsel as if such Opinion of Counsel was dated and delivered the date delivery of such Opinion of Counsel is required. Any Opinion of Counsel may contain reasonable conditions and qualifications satisfactory to the Trustee.

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"ORIGINAL ISSUE DATE" shall mean for a Note, or portions thereof, the date upon which it, or such portion, was issued by the Company pursuant to this Indenture and authenticated by the Trustee (other than in connection with a transfer, exchange or substitution).

"OUTSTANDING", when used with reference to Notes, shall, subject to Section 10.04 hereof, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company), provided that if such Notes are to be redeemed prior to the Stated Maturity thereof, notice of such redemption shall have been given as provided in Article III, or provisions satisfactory to the Trustee shall have been made for giving such notice;

(c) Notes, or portions thereof, that have been paid and discharged or are deemed to have been paid and discharged pursuant to the provisions of this Indenture; and

(d) Notes in lieu of or in substitution for which other Notes shall have been authenticated and delivered, or which have been paid, pursuant to Section 2.07 hereof.

"PERIODIC OFFERING" means an offering of Notes of a series from time to time the specific terms of which Notes, including without limitation the rate or rates of interest, if any, thereon, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Notes.

"PERSON" shall mean any individual, corporation, company partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or government or any agent or political subdivision thereof.

"PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY" shall mean 1201 Walnut, Kansas City, Missouri 64106, or such other place where the main corporate offices of the Company are located as designated in writing to the Trustee by an Authorized Agent.

"REGULAR RECORD DATE" shall mean, unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, for an Interest Payment Date for a particular Note (except for an Interest Payment Date with respect to defaulted interest on such Note) (a) the fifteenth day next preceding each Interest Payment Date (unless the Interest Payment Date is the date of Maturity of such Note, in which event, the Regular Record Date shall be as described in clause (b) hereof) and (b) the date of Maturity of such Note.

"RESPONSIBLE OFFICER" or "RESPONSIBLE OFFICERS" when used with respect to the Trustee shall mean one or more of the following: any assistant vice president, any assistant treasurer, any trust officer, vice president, or any other officer or vice president of the Trustee customarily performing 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

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his or her knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"SPECIAL RECORD DATE" shall mean, with respect to any Note, the date established by the Trustee in connection with the payment of defaulted interest on such Note pursuant to Section 2.11 hereof.

"STATED MATURITY" shall mean with respect to any Note, the last date on which principal on such Note becomes due and payable as therein or herein provided, other than by declaration of acceleration or by redemption.

"SUBSIDIARY" shall mean, as to any Person, any corporation or other entity of which at least a majority of the securities or other ownership interest having ordinary voting power (absolutely or contingently) for the election of directors or other Persons performing similar functions are at the time owned directly or indirectly by such Person.

"TRUSTEE" shall mean The Bank of New York and, subject to Article IX, shall also include any successor Trustee.

"U.S. GOVERNMENT OBLIGATIONS" shall mean (i) direct non-callable obligations of, or non-callable obligations guaranteed as to timely payment of principal and interest by, the United States of America or obligations of a person controlled or supervised by and acting as an agency or instrumentality thereof for the payment of which obligations or guarantee the full faith and credit of the United States is pledged or (ii) certificates or receipts representing direct ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clause (i) above, which obligations are held by a custodian in safekeeping in a manner satisfactory to the Trustee.

## ARTICLE II

### FORM, ISSUE, EXECUTION, REGISTRATION AND

#### EXCHANGE OF NOTES

##### Section 2.01 FORMS GENERALLY.

(a) The Notes shall be in such form as shall be established by a Company Order pursuant to Section 2.05(c) hereof with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements

placed thereon as may be required to comply with applicable rules of any securities exchange or of the Depositary or with applicable law or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution of such Notes.

(b) The definitive Notes shall be typed, printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Notes, as evidenced by their execution of such Notes.

Section 2.02 FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION. The Trustee's certificate of authentication on all Notes shall be in substantially the following form:

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**Trustee's Certificate of Authentication**

This Note is one of the Notes of the series herein designated, described or provided for in the within-mentioned Indenture.

The Bank of New York, as Trustee

By:

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Authorized Signatory

Section 2.03 AMOUNT UNLIMITED. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited, subject to compliance with the provisions of this Indenture.

Section 2.04 DENOMINATIONS, DATES, INTEREST PAYMENT AND RECORD DATES.

(a) The Notes of each series shall be issuable in registered form without coupons in denominations of \$1,000 and integral multiples thereof or such other amount or amounts as may be authorized by the Board of Directors or a Company Order pursuant to a Board Resolution or in one or more indentures supplemental hereto; provided, that the principal amount of a Global Note shall not exceed \$500,000,000 unless otherwise permitted by the Depositary.

(b) Each Note shall be dated and issued as of the date of its authentication by the Trustee, and shall bear an Original Issue Date; each Note issued upon transfer, exchange or substitution of a Note shall bear the Original Issue Date or Dates of such transferred, exchanged or substituted Note, subject to the provisions of Section 2.13(d) hereof.

(c) Each Note shall accrue interest from the later of (1) its Original Issue Date or the date specified in such Note and (2) the most recent date to which interest has been paid or duly provided for with respect to such Note until the principal of such Note is paid or made available for payment, and interest on each Note shall be payable on each Interest Payment Date after the Original Issue Date.

(d) Each Note shall mature on a Stated Maturity specified in the Note. The principal amount of each outstanding Note shall be payable on the Stated Maturity date specified therein.

(e) Unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, interest on each of the Notes shall be calculated on the basis of a 360-day year of twelve 30-day months (and for any partial periods shall be calculated on the basis of the number of days elapsed in a 360-day year of twelve 30-day months) and shall be computed at a fixed rate until the Stated Maturity of such Notes. The method of computing interest on any Notes not bearing a fixed rate of interest shall be set forth in a Company Order pursuant to Section 2.05 hereof. Unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, principal, interest and premium on the Notes shall be payable in the currency of the United States.

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(f) Except as provided in the following sentence, the Person in whose name any Note is registered at the close of business on any Regular Record Date or Special Record Date with respect to an Interest Payment Date for such Note shall be entitled to receive the interest payable on such Interest Payment Date notwithstanding the cancellation of such Note upon any registration of transfer, exchange or substitution of such Note subsequent to such Regular Record Date or Special Record Date and prior to such Interest Payment Date. Any interest payable at Maturity shall be paid to the Person to whom the principal of such Note is payable.

(g) So long as the Trustee is the registrar and paying agent, the Trustee shall, as soon as practicable but no later than the Regular Record Date preceding each applicable Interest Payment Date, provide to the Company a list of the principal, interest and premium to be paid on Notes on such Interest Payment Date. The Trustee shall assume responsibility for withholding taxes on interest paid as required by law except with respect to any Global Note.

Section 2.05 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

(a) The Notes shall be executed on behalf of the Company by one of its Chairman, President, or any Vice President and by its Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company. The signature of any of these officers on the Notes may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Note that has been duly authenticated and delivered by the Trustee.

(b) Notes bearing the manual or facsimile signatures of individuals who were at the time of execution the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes of any series executed by the Company to the Trustee for authentication, together with or preceded by one or more Company Orders for the authentication and delivery of such Notes, and the Trustee in accordance with any such Company Order shall authenticate and make available for delivery such Notes; provided, however, that, with respect to Notes of a series subject to a Periodic Offering, (A) such Company Order may be delivered by the Company to the Trustee prior to the delivery to the Trustee of such Notes for authentication and delivery, (B) the Trustee shall authenticate and deliver Notes of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount established for such series, all pursuant to a further Company Order or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by such further Company Order, (C) the Stated Maturity or Maturities, Original Issue Date or Dates, interest rate or rates and any other terms of Notes of such series shall be determined by such further Company Order or pursuant to such procedures and (D) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Such Company Order shall specify the following with respect to each series of Notes: (i) the title of the Notes of such series (which shall distinguish the Notes of such series from Notes of all other series) and any limitations on the aggregate principal amount of the Notes to be issued as part of such series, (ii) the Original Issue Date for such series, (iii) the Stated Maturity of Notes of such series, (iv) the interest rate or rates, or method of calculation of such rate or rates, for such

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series and the date from which such interest will accrue, (v) the terms, if any, regarding the optional or mandatory redemption of such series, including redemption date or dates of such series, if any, and the price or prices applicable to such redemption, (vi) whether or not the Notes of such series shall be issued in whole or in part in the form of one or more Global Notes and, if so, the identity of the Depository for such Global Note or Global Notes (vii) the denominations in which the Notes of such series will be issued, (viii) the maximum annual interest rate, if any, of the Notes permitted for such series, (ix) the period or periods within which, the price or prices at which and the terms and conditions upon which such series may be repaid, in whole or in part, at the option of the Holder thereof, (x) the establishment of any office or agency pursuant to Section 6.02 hereof, (xi) any addition, deletion or modification to the Events of Default specified in Section 8.01 hereof, with respect to the Notes of such series, and any covenants of the Company for the benefit of the Holders of the Notes of such series set forth in Articles VI and XII hereof, (xii) the terms, if any, pursuant to which the Notes of such series may be converted into or exchanged for shares of capital stock or other securities of the Company, (xiii) the obligation, if any, of the Company to redeem, purchase or repay the Notes of such series, including, but not limited to, pursuant to any sinking fund or analogous provision or at the option of the Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which the Notes of such series shall be redeemed, purchased or repaid pursuant to such obligation, (xiv) any remarketing features of the Notes of such series, (xv) any collateral, security, assurance or guarantee for the Notes of such series, (xvi) if other than the principal amount thereof, the portion of the principal amount of the Notes of such series payable upon declaration of acceleration of the maturity of the Notes of such series, (xvii) the securities exchange(s), if any, on which the debt securities will be listed, (xviii) any interest deferral or extension provisions, (xix) the terms of any warrants the Company may issue to purchase the Notes of such series, (xx) the right, if any, of the Company to extend the interest payment periods of such series of Notes, including the maximum duration of any such extension or extensions, the additional interest, if any, payable on such series of Notes and any notice that must be given upon the exercise of such right to extend interest payment periods, and (xxi) any other terms of such series not inconsistent with this Indenture. With respect to Notes of a series subject to a Periodic Offering, such Company Order may provide general terms or parameters for Notes of such series and provide either that the specific terms of particular Notes of such series shall be specified in a further Company Order or that such terms shall be determined by the Company or its agents in accordance with such further Company Order as contemplated by the proviso of the first sentence of this Section 2.05(c). Prior to authenticating Notes of any series, and in accepting the additional responsibilities under this Indenture in relation to such Notes, the Trustee shall receive from the Company the following at or before the issuance of such series of Notes, and (subject to Section 9.01 hereof) shall be fully protected in relying upon, unless and until such documents have been superseded or revoked prior to such issuance:

(1) A Board Resolution authorizing such Company Order or Orders and, if the form of Notes is established by a Board Resolution or a Company Order pursuant to a Board Resolution, a copy of such Board Resolution;

(2) At the option of the Company, either an Opinion of Counsel or a letter addressed to the Trustee permitting it to rely on an Opinion of Counsel, stating substantially the following subject



to customary qualifications and exceptions:

(A) if the form of such Notes has been established by or pursuant to a Board Resolution, a Company Order pursuant to a Board Resolution, or

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in a supplemental indenture as permitted by Section 2.01 hereof, that such form has been established in conformity with this Indenture;

(B) that this Indenture has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and by an implied covenant of reasonableness, good faith and fair dealing;

(C) that this Indenture is qualified to the extent necessary under the TIA or, if not so required, that this Indenture is not required to be qualified under the TIA;

(D) that such Notes have been duly authorized and executed by the Company, and when authenticated by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and by an implied covenant of reasonableness, good faith and fair dealing;

(E) that the issuance of such Notes will not result in any default under this Indenture;

(F) that all consents or approvals of the Commission (or any successor agency) under the Public Utility Holding Company Act of 1935 and of any other federal or state regulatory agency required in connection with the Company's execution and delivery of this Indenture and such Notes have been obtained and are in full force and effect (except that no statement need be made with respect to state securities laws); and

(G) that all conditions that must be met by the Company to issue Notes under this Indenture have been met.

(3) An Officers' Certificate stating that (i) the Company is not, and upon the authentication by the Trustee of such Notes, will not be in default under any of the terms or covenants contained in this Indenture and (ii) all conditions that must be met by the Company to issue Notes under this Indenture have been met.

(d) No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of an authorized officer, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

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The Trustee shall have the right to decline to authenticate and deliver any Notes under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such actions would expose the Trustee to personal liability to existing Holders.

(e) If all Notes of a series are not to be authenticated and issued at one time in connection with a Periodic Offering, the Company shall not be required to deliver the Company Order, Board Resolution, Officers' Certificate and Opinion of Counsel (including any of the foregoing that would be otherwise required pursuant to Section 15.05 hereof) described in Section 2.05(c) hereof at or prior to the authentication of each Note of such series, if such items are delivered at or prior to the time of authentication of the first Note of such series to be authenticated and issued.

#### Section 2.06 EXCHANGE AND REGISTRATION OF TRANSFER OF NOTES.

(a) Subject to Section 2.13 hereof, Notes of any series may be exchanged for one or more new Notes of the same series of any authorized denominations and of a like aggregate principal amount, series and Stated Maturity and having the same terms and Original Issue Date. Notes to be exchanged shall be surrendered at any of the offices or agencies

to be maintained pursuant to Section 6.02 hereof, and the Trustee shall authenticate and deliver in exchange therefor the Note or Notes of such series which the Noteholder making the exchange shall be entitled to receive.

(b) The Trustee shall keep, at one of said offices or agencies, a register or registers in which, subject to such reasonable regulations as it may prescribe, the Trustee shall register or cause to be registered Notes and shall register or cause to be registered the transfer of Notes as in this Article II provided. Such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, such register shall be open for inspection by the Company. Upon due presentment for registration of transfer of any Note at any such office or agency, the Company shall execute and the Trustee shall register, authenticate and deliver in the name of the transferee or transferees one or more new Notes of any authorized denominations and of a like aggregate principal amount, series and Stated Maturity and having the same terms and Original Issue Date.

(c) All Notes presented for registration of transfer or for exchange, redemption or payment shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee and duly executed by the Holder or the attorney in fact of such Holder duly authorized in writing.

(d) No service charge shall be made for any exchange or registration of transfer of Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

(e) The Trustee shall not be required to exchange or register the transfer of any Notes selected, called or being called for redemption (including Notes, if any, redeemable at the option of the Holder provided such Notes are then redeemable at such Holder's option) except, in the case of any Note to be redeemed in part, the portion thereof not to be so redeemed.

(f) If the principal amount, and applicable premium, of part, but not all of a Global Note is paid, then upon surrender to the Trustee of such Global Note, the Company shall

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execute, and the Trustee shall authenticate, deliver and register, a Global Note in an authorized denomination in aggregate principal amount equal to, and having the same terms, Original Issue Date and series as, the unpaid portion of such Global Note.

#### Section 2.07 MUTILATED, DESTROYED, LOST OR STOLEN NOTES.

(a) If any temporary or definitive Note shall become mutilated or be destroyed, lost or stolen, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, a new Note of like form and principal amount and having the same terms and Original Issue Date and bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, the Trustee and any paying agent or Authenticating Agent 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 of a Note, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

(b) The Trustee shall authenticate any such substituted Note and deliver the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Note, 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 connected therewith. If any Note which has matured, is about to mature, has been redeemed or called for redemption shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note) if the applicant for such payment shall furnish to the Company, the Trustee and any paying agent or Authenticating Agent such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and the Trustee of the destruction, loss or theft of such Note and of the ownership thereof.

(c) Every substituted Note issued pursuant to this Section 2.07 by virtue of the fact that any Note is mutilated, destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not such destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder. All Notes shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes and shall preclude to the full extent permitted by applicable law any and all other rights or remedies with respect to the replacement or payment of negotiable instruments or other securities without

their surrender.

Section 2.08 TEMPORARY NOTES. Pending the preparation of definitive Notes of any series, the Company may execute and the Trustee shall authenticate and deliver temporary Notes (printed, lithographed or otherwise

reproduced). Temporary Notes shall be issuable in any authorized denomination and substantially in the form of the definitive Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Notes. Without unreasonable delay the Company shall execute and shall deliver to the Trustee definitive Notes of such series and thereupon any or all temporary Notes of such

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series shall be surrendered in exchange therefor at the corporate trust office of the Trustee, and the Trustee shall authenticate, deliver and register in exchange for such temporary Notes an equal aggregate principal amount of definitive Notes of such series. Such exchange shall be made by the Company at its own expense and without any charge therefor to the Noteholders. Until so exchanged, the temporary Notes of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Notes of such series authenticated and delivered hereunder.

**Section 2.09 CANCELLATION OF NOTES PAID, ETC.** All Notes surrendered for the purpose of payment, redemption, exchange or registration of transfer shall be surrendered to the Trustee for cancellation and promptly cancelled by it and no Notes shall be issued in lieu thereof except as expressly permitted by this Indenture. The Company shall surrender to the Trustee any Notes so acquired by it and such Notes shall be cancelled by the Trustee. No Notes shall be authenticated in lieu of or in exchange for any Notes so cancelled.

**Section 2.10 INTEREST RIGHTS PRESERVED.** Each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note, and each such Note shall be so dated that neither gain nor loss of interest shall result from such transfer, exchange or substitution.

**Section 2.11 SPECIAL RECORD DATE.** If and to the extent that the Company fails to make timely payment or provision for timely payment of interest on any series of Notes (other than on an Interest Payment Date that is a Maturity date), that interest shall cease to be payable to the Persons who were the Noteholders of such series at the applicable Regular Record Date. In that event, when moneys become available for payment of the interest, the Trustee shall (a) establish a date of payment of such interest and a Special Record Date for the payment of that interest, which Special Record Date shall be not more than 15 or fewer than 10 days prior to the date of the proposed payment and (b) mail notice of the date of payment and of the Special Record Date not fewer than 10 days preceding the Special Record Date to each Noteholder of such series at the close of business on the 15th day preceding the mailing at the address of such Noteholder, as it appeared on the register for the Notes. On the day so established by the Trustee, the interest shall be payable to the Holders of the applicable Notes at the close of business on the Special Record Date.

**Section 2.12 PAYMENT OF NOTES.** Payment of the principal of and interest and premium on all Notes shall be payable as follows:

(a) On or before 10:00 a.m., New York City time, or such other time as shall be agreed upon between the Trustee and the Company, of the day on which payment of principal, interest and premium is due on any Global Note pursuant to the terms thereof, the Company shall deliver to the Trustee or the paying agent funds available on such date sufficient to make such payment, by wire transfer of immediately available funds or by instructing the Trustee to withdraw sufficient funds from an account maintained by the Company with the Trustee or such other method as is acceptable to the Trustee. On or before 1:30 p.m., New York City time, or such other time as shall be agreed upon between the Trustee and the Depository, of the day on which any payment of interest is due on any Global Note (other than at Maturity), the Trustee shall pay to the Depository such interest in same day funds. On or before 1:30 p.m., New York City time or such other time as shall be agreed upon between the Trustee and the Depository, of the day on which principal, interest payable at Maturity and premium, if any, is due on any Global Note, the Trustee shall deposit with the Depository the amount equal to the principal,

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interest payable at Maturity and premium, if any, by wire transfer into the account specified by the Depository. As a condition to the payment, at Maturity, of any part of the principal of, interest on, and applicable premium of any Global Note, the Depository shall surrender, or cause to be surrendered, such Global Note to the Trustee, whereupon a new Global Note shall be issued to the Depository pursuant to Section 2.06(f) hereof.

(b) With respect to any Note that is not a Global Note, principal, applicable premium and interest due at the Maturity of the Note shall be payable in immediately available funds when due upon presentation and surrender of such Note at the corporate trust office of the Trustee or at the authorized office of any paying agent in the Borough of Manhattan, The City and State of New York. Interest on any Note that is not a Global Note (other than interest payable at Maturity) shall be paid by check payable in clearinghouse funds mailed to the Holder thereof at such Holder's address as it appears on the register; provided that if the Trustee receives a written request from any Holder of Notes, the aggregate principal amount of which having the same Interest Payment Date equals or exceeds \$10,000,000, on or before the applicable Regular Record Date for such Interest Payment Date, interest on such Note shall be paid by wire transfer of immediately available funds to a bank within the continental United States designated by such Holder in its request or by direct deposit into the account of such Holder designated by such Holder in its request if such account is maintained with the Trustee or any paying agent.

Section 2.13 NOTES ISSUABLE IN THE FORM OF A GLOBAL NOTE.

(a) If the Company shall establish pursuant to Section 2.05 hereof that the Notes of a particular series are to be issued in the form of one or more Global Notes, then the Company shall execute and the Trustee shall, in accordance with Section 2.05 hereof and the Company Order delivered to the Trustee thereunder, authenticate and deliver such Global Note or Notes, which, unless otherwise specified in such Company Order, (i) shall represent, shall be denominated in an amount equal to the aggregate principal amount of, and shall have the same terms as, the outstanding Notes of such series to be represented by such Global Note or Notes, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "This Note is a Global Note registered in the name of the Depository (referred to herein) or a nominee thereof and, unless and until it is exchanged in whole for the individual Notes represented hereby as provided in the Indenture referred to below, this Global Note may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. Unless this Global Note is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful since the registered owner hereof, Cede & Co., has an interest herein" or such other legend as may be required by the rules and regulations of the Depository.

(b) (i) If at any time the Depository for a Global Note notifies the Company that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Global Note shall no longer be eligible or in good standing under the Securities Exchange Act of 1934

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or other applicable statute or regulation, the Company shall appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 2.05(c)(vi) hereof shall no longer be effective with respect to the series of Notes evidenced by such Global Note and the Company shall execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Notes of such series in exchange for such Global Note, shall authenticate and deliver, individual Notes of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Note in exchange for such Global Note. The Trustee shall not be charged with knowledge or notice of the ineligibility of a Depository unless a Responsible Officer shall have a actual knowledge thereof.

(ii) (A) The Company may at any time and in its sole discretion determine that all outstanding (but not less than all) Notes of a series issued or issuable in the form of one or more Global Notes shall no longer be represented by such Global Note or Notes. In such event the Company shall execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Notes in exchange for such Global Note, shall authenticate and deliver individual Notes of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Note or Notes in exchange for such Global Note or Notes.

(B) Within seven days after the occurrence of an Event of Default with respect to any series of Global Notes, the Company shall execute, and the Trustee shall authenticate and deliver, Notes of such series in definitive registered form in any authorized denominations and in aggregate principal amount equal to the principal amount of such Global Notes in exchange for such Global Notes.

(iii) In any exchange provided for in any of the preceding two paragraphs, the Company will execute and the Trustee will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of a Global Note for individual Notes, such Global Note shall be cancelled by the Trustee. Notes issued in exchange for a Global Note pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Notes to the Depository for delivery to the persons in whose names such Notes are so registered, or if the Depository shall refuse or be unable to deliver such Notes, the Trustee shall

deliver such Notes to the persons in whose names such Notes are registered, unless otherwise agreed upon between the Trustee and the Company, in which event the Company shall cause the Notes to be delivered to the persons in whose names such Notes are registered.

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(c) Neither the Company, the Trustee, any Authenticating Agent nor any paying agent shall have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interest.

(d) Pursuant to the provisions of this subsection, at the option of the Trustee (subject to Section 2.04(a) hereof) and upon 30 days' written notice to the Depository but not prior to the first Interest Payment Date of the respective Global Notes, the Depository shall be required to surrender any two or more Global Notes which have identical terms, including, without limitation, identical maturities, interest rates and redemption provisions (but which may have differing Original Issue Dates) to the Trustee, and the Company shall execute and the Trustee shall authenticate and deliver to, or at the direction of, the Depository a Global Note in principal amount equal to the aggregate principal amount of, and with all terms identical to, the Global Notes surrendered thereto and that shall indicate each applicable Original Issue Date and the principal amount applicable to each such Original Issue Date. The exchange contemplated in this subsection shall be consummated at least 30 days prior to any Interest Payment Date applicable to any of the Global Notes surrendered to the Trustee. Upon any exchange of any Global Note with two or more Original Issue Dates, whether pursuant to this Section or pursuant to Section 2.06 or Section 3.03 hereof, the aggregate principal amount of the Notes with a particular Original Issue Date shall be the same before and after such exchange, after giving effect to any retirement of Notes and the Original Issue Dates applicable to such Notes occurring in connection with such exchange.

Section 2.14 CUSIP AND ISIN NUMBERS. The Company in issuing Notes may use "CUSIP" or "ISIN" numbers (if then generally in use) and, if so used, the Trustee shall use "CUSIP" or "ISIN" numbers in notices of redemption as a convenience to holders of Notes; provided, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the "CUSIP" or "ISIN" numbers.

Section 2.15 EXTENSION OF INTEREST PAYMENT PERIODS. The Company shall have the right at any time, so long as the Company is not in default in the payment of interest on the Notes of any series hereunder, to extend interest payment periods on all Notes of one or more series, if so specified as contemplated by Section 2.05 with respect to such Notes and upon such terms as may be specified as contemplated by Section 2.05 with respect to such Notes.

### **ARTICLE III**

#### **REDEMPTION OF NOTES**

Section 3.01 APPLICABILITY OF ARTICLE. Those Notes of any series that are, by their terms, redeemable prior to their Stated Maturity at the option of the Company, may be redeemed by the Company at such times, in such amounts and at such prices as may be specified therein and in accordance with the provisions of this Article III.

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Section 3.02 NOTICE OF REDEMPTION; SELECTION OF NOTES.

(a) The election of the Company to redeem any Notes shall be evidenced by a Board Resolution which shall be given with notice of redemption to the Trustee at least 45 days (or such shorter period acceptable to the Trustee in its sole discretion) prior to the redemption date specified in such notice.

(b) Notice of redemption to each Holder of Notes to be redeemed as a whole or in part shall be given by the Trustee, in the manner provided in Section 15.10 hereof, no less than 30 or more than 60 days prior to the date fixed for redemption. Any notice which is given in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Noteholder receives the notice. In any case, failure duly to give such notice, or any defect in such notice, to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each such notice shall identify the Notes to be redeemed (including "CUSIP" or "ISIN" numbers) and shall specify the date fixed for redemption, the places of redemption and the redemption price (or the method for calculation thereof) at which such Notes are to be redeemed, and shall state that (subject to subsection (e) of this section) payment of the redemption price of such Notes or portion thereof to be redeemed will be made upon surrender of such Notes at such places of redemption, that interest accrued to the date fixed for redemption will be paid as specified in such notice, and that from and after such date interest thereon shall cease to accrue. If less than all of a series of Notes having the same terms are to be redeemed, the notice shall specify the Notes or portions thereof to be redeemed. If any Note is to be redeemed in part only, the notice which relates to such Note shall state the portion of the principal amount thereof to

be redeemed, and shall state that, upon surrender of such Note, a new Note or Notes having the same terms in aggregate principal amount equal to the unredeemed portion thereof will be issued.

(d) Unless otherwise provided by a Company Order under Section 2.05 hereof, if less than all of a series of Notes is to be redeemed, the Trustee shall select in such manner as it shall deem appropriate and fair in its discretion the particular Notes to be redeemed in whole or in part and shall hereafter promptly notify the Company in writing of the Notes so to be redeemed. If less than all of a series of Notes represented by a Global Note is to be redeemed, the particular Notes or portions thereof of such series to be redeemed shall be selected by the Depositary for such series of Notes in such manner as the Depositary shall determine. Notes shall be redeemed only in denominations of \$1,000, or such other denominations authorized by a Company Order pursuant to Section 2.05 hereof, provided that any remaining principal amount of a Note redeemed in part shall be a denomination authorized under this Indenture.

(e) If at the time of the mailing of any notice of redemption at the option of the Company, the Company shall not have irrevocably directed the Trustee to apply funds then on deposit with the Trustee or held by it and available to be used for the redemption of Notes to redeem all the Notes called for redemption, such notice, at the election of the Company, may state that it is conditional and subject to the receipt of the redemption moneys by the Trustee on or before the date fixed for redemption and that such notice shall be of no force and effect unless such moneys are so received on or before such date.

### Section 3.03 PAYMENT OF NOTES ON REDEMPTION; DEPOSIT OF REDEMPTION PRICE.

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(a) If notice of redemption for any Notes shall have been given as provided in Section 3.02 hereof and such notice shall not contain the language permitted at the Company's option under Section 3.02(e) hereof, such Notes or portions of Notes called for redemption shall become due and payable on the date and at the places stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption of such Notes. Interest on the Notes or portions thereof so called for redemption shall cease to accrue and such Notes or portions thereof shall be deemed not to be entitled to any benefit under this Indenture except to receive payment of the redemption price together with interest accrued thereon to the date fixed for redemption. Upon presentation and surrender of such Notes at the place of payment specified in such notice, such Notes or the specified portions thereof shall be paid and redeemed at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption.

(b) If notice of redemption shall have been given as provided in Section 3.02 hereof and such notice shall contain the language permitted at the Company's option under Section 3.02(e) hereof, such Notes or portions of Notes called for redemption shall become due and payable on the date and at the places stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption of such Notes, and interest on the Notes or portions thereof so called for redemption shall cease to accrue and such Notes or portions thereof shall be deemed not to be entitled to any benefit under this Indenture except to receive payment of the redemption price together with interest accrued thereon to the date fixed for redemption; provided that, in each case, the Company shall have deposited with the Trustee or a paying agent on or prior to 11:00 a.m. New York City time on such redemption date an amount sufficient to pay the redemption price together with interest accrued to the date fixed for redemption. Upon the Company making such deposit and, upon presentation and surrender of such Notes at such a place of payment in such notice specified, such Notes or the specified portions thereof shall be paid and redeemed at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption. If the Company shall not make such deposit on or prior to the redemption date, the notice of redemption shall be of no force and effect and the principal on such Notes or specified portions thereof shall continue to bear interest as if the notice of redemption had not been given.

(c) No notice of redemption of Notes shall be mailed during the continuance of any Event of Default, except (1) that, when notice of redemption of any Notes has been mailed, the Company shall redeem such Notes but only if funds sufficient for that purpose have prior to the occurrence of such Event of Default been deposited with the Trustee or a paying agent for such purpose, and (2) that notices of redemption of all outstanding Notes may be given during the continuance of an Event of Default.

(d) Upon surrender of any Note redeemed in part only, the Company shall execute, and the Trustee shall authenticate, deliver and register, a new Note or Notes of authorized denominations in aggregate principal amount equal to, and having the same terms, Original Issue Date or Dates and series as, the unredeemed portion of the Note so surrendered.

## ARTICLE IV

### SINKING FUNDS

Section 4.01 APPLICABILITY OF ARTICLE. The provisions of this Article shall be applicable to any sinking fund for the retirement of the Notes of any series, except as otherwise specified as contemplated by Section 2.05(c) hereof for Notes of such series.

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The minimum amount of any sinking fund payment provided for by the terms of Notes of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Notes of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Notes of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 4.02 hereof. Each sinking fund payment shall be applied to the redemption of Notes of the series in respect of which it was made as provided for by the terms of such Notes.

Section 4.02 SATISFACTION OF SINKING FUND PAYMENTS WITH NOTES. The Company (a) may deliver Outstanding Notes (other than any previously called for redemption) of a series in respect of which a mandatory sinking fund payment is to be made and (b) may apply as a credit Notes of such series which have been redeemed either at the election of the Company pursuant to the terms of such Notes or through the application of permitted optional sinking fund payments pursuant to the terms of such Notes, in each case in satisfaction of all or any part of such mandatory sinking fund payment; provided, however, that no Notes shall be applied in satisfaction of a mandatory sinking fund payment if such Notes shall have been previously so applied. Notes so applied shall be received and credited for such purpose by the Trustee at the redemption price specified in such Notes for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

Section 4.03 REDEMPTION OF NOTES FOR SINKING FUND. Not less than 45 days prior to each sinking fund payment date for the Notes of any series, the Company shall deliver to the Trustee an Officers' Certificate specifying:

- (a) the amount of the next succeeding mandatory sinking fund payment for such series;
- (b) the amount, if any, of the optional sinking fund payment to be made together with such mandatory sinking fund payment;
- (c) the aggregate sinking fund payment;
- (d) the portion, if any, of such aggregate sinking fund payment which is to be satisfied by the payment of cash; and
- (e) the portion, if any, of such aggregate sinking fund payment which is to be satisfied by delivering and crediting Notes of such series pursuant to Section 4.02 hereof and stating the basis for such credit and that such Notes have not previously been so credited.

The Company shall also deliver to the Trustee any Notes to be so delivered. If the Company shall not deliver such Officers' Certificate, the next succeeding sinking fund payment for such series shall be made entirely in cash in the amount of the mandatory sinking fund payment. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Notes to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02(d) hereof and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02 hereof. Such notice having been duly given, the redemption of such Notes shall be made upon the terms and in the manner stated in Section 3.03 hereof.

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## ARTICLE V

### SATISFACTION AND DISCHARGE; UNCLAIMED MONEYS

Section 5.01 SATISFACTION AND DISCHARGE OF INDENTURE. This Indenture shall upon the request of the Company cease to be of further effect with respect to the Notes of any series (except as to any surviving rights of registration of transfer or exchange of Notes of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

- (a) either:
  - (i) all Notes of such series previously authenticated and delivered (other than Notes of such series which have been destroyed, lost or stolen and which have been replaced or paid) have been delivered to the Trustee for cancellation; or
  - (ii) all the Notes of such series not previously delivered to the Trustee for cancellation have become due and payable (whether at stated maturity, early redemption or otherwise), and the Company has deposited, or caused to be deposited, irrevocably with the Trustee as funds in trust solely for the benefit of the Holders of the Notes of such series an amount in cash sufficient to pay principal of, premium, if any, and interest on all outstanding Notes of such series;
- (b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Notes of such series; and
- (c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the

Notes of such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to the Notes of any or all series, the obligations of the Company to the Trustee under Section 9.06 hereof shall survive, and, if money will have been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section 5.01, the obligations of the Trustee under Sections 5.02 and 5.05 hereof shall survive.

#### Section 5.02 APPLICATION OF TRUST FUNDS; INDEMNIFICATION.

(a) Subject to the provisions of Section 5.05 hereof, all money and U.S. Government Obligations deposited with the Trustee pursuant to Section 5.01, 5.03 or 5.04 hereof and all money received by the Trustee in respect of U.S. Government Obligations deposited with the Trustee pursuant to Sections 5.01, 5.03 or 5.04 hereof, shall be held in trust and applied by it, in accordance with the provisions of the Notes of any particular series and this Indenture, to the payment, either directly or through any paying agent as the Trustee may determine, to the persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with or received by the Trustee.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations deposited

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pursuant to Sections 5.01, 5.03 or 5.04 hereof or the interest, premium, if any, and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon the request of the Company any U.S. Government Obligations or money held by it as provided in Sections 5.01, 5.03 or 5.04 hereof which, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such U.S. Government Obligations or money were deposited or received. This provision shall not authorize the sale by the Trustee of any U.S. Government Obligations held under this Indenture.

Section 5.03 LEGAL DEFEASANCE. The Company shall be deemed to have been discharged from its obligations with respect to all of the outstanding Notes of any series on the day after the date of the deposit referred to in subparagraph (i) hereof, and the provisions of this Indenture, as it relates to the outstanding Notes of such series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, upon the request of the Company, execute proper instruments acknowledging the same), except as to:

(a) the rights of Holders of the Notes of such series to receive, solely from the trust funds described in subparagraph (i) below, payments of the principal of, premium, if any, or interest on the outstanding Notes of such series on the date such payments are due;

(b) the Company's obligations with respect to the Notes of such series under Sections 2.06, 2.07, 2.13, 6.02 and 6.04 hereof; and

(c) the rights, powers, trust and immunities of the Trustee hereunder and the duties of the Trustee under Section 5.02 hereof and the duty of the Trustee to authenticate Notes of such series issued on registration of transfer of exchange; provided that the following conditions shall have been satisfied:

(i) the Company shall have deposited, or caused to be deposited, irrevocably with the Trustee as funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of the Notes of such series, cash in U.S. dollars and/or U.S. Government Obligations which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (without reinvestment), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal of, premium, if any, and interest on all the Notes of such series on the dates such payments of principal, premium, if any, or interest are due to maturity or redemption;

(ii) no Event of Default or event which with the giving of notice or lapse of time or both would become an Event of Default with respect to the Notes of such series shall have occurred and be continuing on the date of such deposit and 91 days shall have passed after the deposit has been made, and, during such 91 day period, no Default with respect to the Notes of such series specified in Section 8.01(a)(5) or (6) hereof with respect to the Company occurs which is continuing at the end of such period;

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(iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (A) the Company has received from, or there has been published by,



the Internal Revenue Service a ruling, or (B) since the date of execution of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Notes of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax in the same amounts, in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

(iv) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Notes of such series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(v) such deposit shall not cause the Trustee to have a conflicting interest within the meaning of the TIA with respect to any securities of the Company or result in the trust arising from such deposit constituting an "investment company" (as defined in the Investment Company Act of 1940, as amended); and

(vi) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the defeasance contemplated by this Section 5.03 have been complied with.

Subject to compliance with this Article V, the Company may exercise its option under this Section 5.03 notwithstanding the prior exercise of its option under Section 5.04 with respect to the Notes of any series. Following a defeasance, payment of the Notes of such series may not be accelerated because of an Event of Default.

**Section 5.04 COVENANT DEFEASANCE.** On and after the day after the date of the deposit referred to in subparagraph (a) hereof, the Company may omit to comply with any term, provision or condition set forth under Section 6.05 and Article XII hereof as well as any additional covenants contained in a supplemental indenture hereto (and the failure to comply with any such provisions shall not constitute a Default or Event of Default under Section 8.01 hereof) and the occurrence of any event described in clause (3) and (4) of Section 8.01(a) hereof shall not constitute a Default or Event of Default hereunder, with respect to the Notes of any series, provided that the following conditions shall have been satisfied:

(a) with reference to this Section 5.04, the Company has deposited, or caused to be deposited, irrevocably (except as provided in Section 5.05 hereof) with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Notes of such series, cash in U.S. dollars and/or U.S. Government Obligations which through the payment of principal and interest in respect thereof, in accordance with their terms, will provide (without reinvestment), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of

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independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal, premium, if any, and interest on all the Notes of such series on the dates such payments of principal, premium, if any, and interest are due to maturity or redemption;

(b) no Event of Default or event which with the giving of notice or lapse of time or both would become an Event of Default with respect to the Notes of such series shall have occurred and be continuing on the date of such deposit and 91 days shall have passed after the deposit has been made, and, during such 91 day period, no Default with respect to the Notes of such series specified in Section 8.01(a)(5) or (6) hereof with respect to the Company occurs which is continuing at the end of such period;

(c) the Company shall have delivered to the Trustee an Opinion of Counsel confirming that Holders of the Notes of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance and will be subject to federal income tax in the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(d) the Company shall have delivered to the Trustee an Officers' Certificate stating the deposit was not made by the Company with the intent of preferring the Holders of the Notes of such series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(e) such deposit shall not cause the Trustee to have a conflicting interest within the meaning of the TIA with respect to any securities of the Company or result in the trust arising from such deposit constituting an "investment company" (as defined in the Investment Company Act of 1940, as amended);

(f) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated by this Section 5.04 have been complied with; and

(g) following a covenant defeasance, payment of the Notes of any series may not be accelerated because of an Event of Default specified in Sections 8.01(a)(5) and (6) or by reference to Sections 6.05 and 8.01(a)(3) and (4) and Article XII hereof.

Section 5.05 REPAYMENT TO COMPANY. The Trustee and the paying agent shall pay to the Company upon request any money held by them for the payment of principal, premium, if any, or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders of the Notes of such series entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person.

## ARTICLE VI

### PARTICULAR COVENANTS OF THE COMPANY

Section 6.01 PAYMENT OF PRINCIPAL AND INTEREST. The Company covenants and agrees for the benefit of the Holders of the Notes of any series that it will duly and punctually pay or cause to be paid the principal of and any premium and interest, if any, on, such Notes at

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the places, at the respective times and in the manner provided in such Notes or in this Indenture.

Section 6.02 OFFICES FOR PAYMENTS, ETC. So long as the Notes of any series are outstanding hereunder, the Company will maintain an office or agency where the Notes of such series may be presented for payment, for exchange as in this Indenture provided, for registration of transfer as in this Indenture provided, and where notices and demands to or upon the Company in respect of the securities under this Indenture may be served. The Principal Executive Offices of the Company will be such office or agency unless the Company shall maintain some other office or agency for such purposes and shall give the Trustee and the registered holders of the securities written notice of the location thereof. If the Company shall fail to give such notice of the location or of any change in the location of any of the above offices or agencies, presentations and demands may be made and notices may be served at the Corporate Trust Office of the Trustee, and, in such event, the Trustee shall act as the Company's agent to receive all such presentations, surrenders, notices and demands.

The Company may from time to time designate one or more additional offices or agencies where the Notes of any series may be presented for payment, for exchange as in this Indenture provided and for registration of transfer as in this Indenture provided, and the Company may from time to time rescind any such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain any office or agency provided for in this Section. The Company will give to the Trustee prompt written notice of any such designation or rescission thereof and of any change in the location of any such other office or agency.

Section 6.03 APPOINTMENT TO FILL A VACANCY IN OFFICE OF TRUSTEE. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 9.11, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 6.04 PROVISION AS TO PAYING AGENT. The Trustee shall be the paying agent for the Notes and, at the option of the Company, the Company may appoint additional paying agents (including without limitation itself or its Subsidiary unless an Event of Default has occurred and is continuing). Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Notes, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(a) that such paying agent will hold all sums received by it as such agent for the payment of the principal of or interest, if any, on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the Holders of the Notes, or of the Trustee until such sums shall be paid to such Holders or otherwise disposed of as herein provided;

(b) that such paying agent will give the Trustee notice of any failure by the Company (or by any other obligor on Notes) to make any payment of the principal of, premium if any, or interest on the Notes when the same shall be due and payable; and

(c) that such paying agent will at any time during the continuance of any such failure, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

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The Company will, on or prior to each due date of the principal of and any premium, if any, or interest on the Notes, deposit with the paying agent a sum sufficient to pay such principal and any premium or interest so becoming due, such sum to be held in trust for the benefit of the Holders of the Notes entitled to such principal of and any premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action.

If the Company or its Subsidiary shall act as its own paying agent with respect to the Notes, it will, on or before each due date of the principal of (and premium, if any) or interest, if any, on the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes, a sum sufficient to pay such principal (and premium, if any) or interest, if any, so becoming due until such sums shall be paid to such Holders or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

The Company may at any time pay or cause to be paid to the Trustee all sums held in trust by it or any paying agent hereunder, as required by this Section, such sums to be held by the Trustee upon the trusts herein contained, 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.

Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Sections 5.03 and 5.04.

**Section 6.05 CORPORATE EXISTENCE.** Subject to the rights of the Company under Article XII, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory) and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right or franchise if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company.

**Section 6.06 CERTIFICATES AND NOTICE TO TRUSTEE.** The Company shall, on or before June 30 of each year, commencing in 2004 deliver to the Trustee a certificate from its principal executive officer, principal financial officer or principal accounting officer covering the preceding calendar year and stating whether or not, to the knowledge of such Person, the Company has complied with all conditions and covenants under this Indenture, and, if not, describing in reasonable detail any failure by the Company to comply with any such conditions or covenants. For purposes of this Section, compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

## **ARTICLE VII**

### **NOTEHOLDER LISTS AND REPORTS BY**

#### **THE COMPANY AND THE TRUSTEE**

**Section 7.01 COMPANY TO FURNISH NOTEHOLDER LISTS.** The Company and any other obligor on the Notes shall furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Notes:

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(a) semi-annually and not more than 15 days after each Regular Record Date for each Interest Payment Date that is not a Maturity date, as of such Regular Record Date, and such list need not include information received after such date; and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, as of a date not more than 15 days prior to the time such information is furnished, and such list need not include information received after such date; provided that if and so long as the Trustee shall be the registrar for the Notes, such list shall not be required to be furnished.

**Section 7.02 PRESERVATION AND DISCLOSURE OF NOTEHOLDER LISTS.**

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of the Notes (i) contained in the most recent lists furnished to it as provided in Section 7.01, (ii) received by it in the capacity of registrar for the Notes, if so acting, and (iii) filed with it within the two preceding years pursuant to Section 7.04(d)(2). The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

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

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

(ii) inform such applicants as to the approximate number of Holders whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the

provisions of such subsection (a) and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford to such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder of Notes, whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of such subsection (a) a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more

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of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met, and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

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

Section 7.03 REPORTS BY THE COMPANY. The Company shall:

(a) 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) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations. Filing of such information, documents and reports with the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates); and

(c) transmit by mail to all Holders of Notes, within 30 days after the filing thereof with the Trustee in the manner and to the extent provided in Section 7.04(d), such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Note that, for purposes of this Section 7.03, the Company's responsibility to file information with the Trustee which is also filed with the Commission, shall be deemed to be satisfied by the posting of the Company's filings with the Commission on the Commission's website ([www.sec.gov/edgar](http://www.sec.gov/edgar)).

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Section 7.04 REPORTS BY THE TRUSTEE.

(a) Annually, not later than August 15 of each year, the Trustee shall transmit by mail a brief report dated as of such date that complies with Section 313(a) of the TIA (to the extent required by such Section).

(b) The Trustee shall from time to time transmit by mail brief reports that comply, both in content and date of delivery, with Section 313(b) of the TIA (to the extent required by such Section).

(c) A copy of each such report filed pursuant to this section shall, at the time of such transmission to such Holders, be filed by the Trustee with each stock exchange upon which any Notes are listed and also with the Commission. The

Company will notify the Trustee promptly in writing upon the listing of such Notes on any stock exchange or any delisting thereof.

(d) Except as otherwise described in Section 7.03, reports pursuant to this Section shall be transmitted:

- (1) by mail to all Holders of Notes, as their names and addresses appear in the register for the Notes;
- (2) by mail to such Holders of Notes as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for such purpose;
- (3) by mail, except in the case of reports pursuant to Section 7.04(b) and (c) hereof, to all Holders of Notes whose names and addresses have been furnished to or received by the Trustee pursuant to Section 7.0 and 7.02(a)(ii) hereof; and
- (4) at the time such report is transmitted to the Holders of the Notes, to each exchange on which Notes are listed and also with the Commission.

## **ARTICLE VIII**

### **REMEDIES OF THE TRUSTEE AND NOTEHOLDERS**

#### **ON EVENTS OF DEFAULT**

##### **Section 8.01 EVENTS OF DEFAULT.**

(a) If one or more of the following Events of Default with respect to the Notes of any series shall have occurred and be continuing:

(1) default in the payment of any installment of interest upon any Note of such series as and when the same shall become due and payable, and continuance of such default for a period of thirty (30) days, provided, however, that a valid extension of the interest payment period or deferral of interest payment by the Company as contemplated in Section 2.15 shall not constitute a failure to pay interest for this purpose;

(2) default in the payment of the principal of or any premium on any Note of such series as and when the same shall become due and payable, and continuance of such default for a period of one (1) day;

(3) failure on the part of the Company duly to observe or perform any other covenants or agreements on the part of the Company contained in this Indenture (other than a covenant or agreement that has been expressly included in this Indenture solely for the benefit of one or more series of Notes other than such series) for a period of sixty (60) days after the date on which written notice specifying such failure, stating that such notice is a "Notice of Default" hereunder and demanding that the Company remedy the same, shall have been given to the Company by the Trustee by registered mail, or to the Company and the Trustee by the Holders of not less than 33% in aggregate principal amount of the Notes of such series at the time outstanding;

(4) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days;

(5) the Company shall commence a voluntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect or any other case or proceeding to be adjudicated a bankrupt or insolvent, or consent to the entry of a decree or order for relief in an involuntary case under any such law, or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable law, or consent to the filing of such petition or to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or make any general assignment for the benefit of creditors, or

the notice by it in writing of its inability to pay its debts generally as they become due, or the taking of any corporate action by the Company in furtherance of any such action; or

(6) any other Event of Default specified with respect to Notes of any series pursuant to Section 2.05 hereof;

then, unless the principal of and interest on all of the Notes shall have already become due and payable, either the Trustee or the Holders of a majority in aggregate principal amount of the Notes of such series then outstanding, by notice in writing to the Company (and to the Trustee if given by such Holders), may declare the principal of and interest on all the Notes of such series to be due and payable immediately and upon any such declaration the same shall become immediately due and payable, anything in this Indenture or in the Notes of such series

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contained to the contrary notwithstanding; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Notes, the Trustee or the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, may make such declaration of acceleration, and not the Holders of the Notes of any one of such series.

The foregoing paragraph, however, is subject to the condition that if, at any time after the principal of and interest on the Notes of any series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all of the Notes of such series and the principal of and any premium on any and all Notes of such series which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent that payment of such interest is enforceable under applicable law, and on such principal and applicable premium at the rate borne by the Notes of such series to the date of such payment or deposit) and all sums paid or advanced by the Trustee hereunder, the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.06 hereof, and any and all Events of Default, other than the non-payment of principal of and accrued interest on any Notes which shall have become due solely by acceleration of maturity, shall have been cured or waived, then and in every such case such payment or deposit shall cause an automatic waiver of the Event of Default and its consequences and shall cause an automatic rescission and annulment of the acceleration of the Notes of such series; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

#### Section 8.02 COLLECTION OF INDEBTEDNESS BY TRUSTEE; TRUSTEE MAY PROVE DEBT.

(a) The Company covenants that if an Event of Default described in clause (a)(1) or (a)(2) of Section 8.01 hereof shall have occurred and be continuing, then, upon demand of the Trustee, the Company shall pay to the Trustee, for the benefit of the Holders of the Notes of the series with respect to which Event of Default shall have occurred and is continuing, the whole amount that then shall have so become due and payable on all such Notes for principal or interest, as the case may be, with interest upon the overdue principal and any premium and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest at the rate borne by such Notes; and, in addition thereto, such further amounts as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith. Until such demand is made by the Trustee, the Company may pay the principal of and interest on such Notes to the Holders, whether or not such Notes be overdue.

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

(c) In case there shall be pending proceedings relative to the Company or any other obligor upon the Notes under Title 11 of the United States Code or any other applicable Federal or state bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or its property or such other obligor, or in case of any other comparable judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made

any demand pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise:

(1) to file and prove a claim or claims for the whole amount of the principal and interest owing and unpaid in respect of the Notes, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in any judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor; and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver, liquidator, custodian or other similar official is hereby authorized by each of the Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of the payments directly to the Noteholders, to pay to Trustee such amounts due pursuant to Section 9.06 hereof.

(d) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes of any series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding except to vote for the election of a trustee in bankruptcy or similar person.

(e) All rights of action and of asserting claims under this Indenture, or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee and its agents, attorneys and counsel, shall be for the ratable benefit of the Holders of the Notes in respect of which such action was taken.

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(f) In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Notes in respect to which action was taken, and it shall not be necessary to make any Holders of such Notes parties to any such proceedings.

Section 8.03 APPLICATION OF PROCEEDS. Any moneys collected by the Trustee with respect to any of the Notes pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid.

FIRST: To the payment of all amounts due to the Trustee pursuant to Section 9.06 hereof;

SECOND: In case the principal of the outstanding Notes in respect of which such moneys have been collected shall not have become due and be unpaid, to the payment of interest on the Notes, in the order of the maturity of the installments of such interest, with interest (to the extent allowed by law) upon the overdue installments of interest at the rate borne by the Notes, such payments to be made ratably to the persons entitled thereto, and then to the payment to the Holders entitled thereto of the unpaid principal of and applicable premium on any of the Notes which shall have become due (other than Notes previously called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), whether at stated maturity or by redemption, in the order of their due dates, beginning with the earliest due date, and if the amount available is not sufficient to pay in full all Notes due on any particular date, then to the payment thereof ratably, according to the amounts of principal and applicable premium due on that date, to the Holders entitled thereto, without any discrimination or privilege;

THIRD: In case the principal of the outstanding Notes in respect of which such moneys have been collected shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Notes for principal and any premium and interest thereon, with interest on the overdue principal and any premium and (to the extent allowed by law) upon overdue installments of interest at the rate borne by the Notes; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, then to the payment of such principal and any premium and interest without preference or priority of principal and any premium over interest, or of interest over principal and any premium or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and any premium and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Company or its successors or assigns, or to whomsoever may lawfully be entitled to the same, or as a court of competent jurisdiction may determine.

Section 8.04 LIMITATIONS ON SUITS BY NOTEHOLDERS.

(a) No Holder of any Note of any series shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the

appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to

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the Trustee written notice of an Event of Default with respect to such Note and of the continuance thereof, as hereinabove provided, and unless also Noteholders of a majority in aggregate principal amount of the Notes of all series then outstanding in respect of which an Event of Default has occurred and is continuing, considered as one class, shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by the taker and Holder of every Note of any series with every other taker and Holder and the Trustee, that no one or more Holders of Notes of such series shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder of Notes of such series, 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 Notes of such series. For the protection and enforcement of the provisions of this Section, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

(b) Notwithstanding any other provision in this Indenture, however, the rights of any Holder of any Note to receive payment of the principal of and any premium and interest on such Note, on or after the respective due dates expressed in such Note or on the applicable redemption date, or to institute suit for the enforcement of any such payment on or after such respective dates are absolute and unconditional, and shall not be impaired or affected without the consent of such Holder.

**Section 8.05 SUITS FOR ENFORCEMENT.** In case an Event of Default has occurred, has not been waived and is continuing hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted to it under this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

**Section 8.06 POWERS AND REMEDIES CUMULATIVE; DELAY OR OMISSION NOT WAIVER OF DEFAULT.** No right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Notes is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Holder of Notes 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 Event of Default or an acquiescence therein; and, subject to Section 8.04, every right and power given by this Indenture or by law to the Trustee or to the Holders of Notes may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders of Notes, as the case may be.

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**Section 8.07 DIRECTION OF PROCEEDINGS AND WAIVER OF DEFAULTS BY MAJORITY OF NOTEHOLDERS.**

(a) The Holders of a majority in aggregate principal amount of the Notes of any series at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Notes, the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, shall have the right to make such direction, and not the Holders of the Notes of any one of such series; provided, further, that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture; and provided further that (subject to Section 9.01 hereof) the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees or responsible officers shall determine that the action or proceeding so directed would involve the Trustee in personal liability. Nothing in this Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction or directions by Noteholders.

(b) The Holders of a majority in aggregate principal amount of the Notes of any series at the time outstanding may on behalf of all of the Holders of the Notes of such series waive any past default or Event of Default hereunder and its consequences except a default in the payment of principal of or any premium or interest on the Notes of such series. Upon any such waiver the Company, the Trustee and the Holders of the Notes of such series shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default



or Event of Default or impair any right consequent thereon. Upon such waiver, such default shall cease to exist and be deemed to have been cured and not to be continuing, and any Event of Default arising therefrom shall be deemed to have been cured and not to be continuing, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 8.08 NOTICE OF DEFAULT.** The Trustee shall, within 90 days after the occurrence of a default with respect to the Notes of any series, give to all Holders of the Notes of such series, in the manner provided in Section 15.10, notice of such default actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived before the giving of such notice, the term "default" for the purpose of this Section 8.08 being hereby defined to be any event which is or after notice or lapse of time or both would become an Event of Default; provided that, except in the case of default in the payment of the principal of or any premium or interest on any of the Notes of such series, or in the payment of any sinking or purchase fund installments, the Trustee shall be protected in withholding such notice if and so long as its board of directors or trustees, executive committee, or a trust committee of directors or trustees or responsible officers in good faith determines that the withholding of such notice is in the interests of the Holders of the Notes of such series. The Company shall deliver to the Trustee, as soon as possible and in any event within five days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

**Section 8.09 UNDERTAKING TO PAY COSTS.** All parties to this Indenture agree, and each Holder of any Note by acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but this Section 8.09 shall not apply to any suit instituted by the Trustee, or to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes of all series in respect of which such suit may be brought, considered as one class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or any premium or interest on any Note on or after the due date expressed in such Note or the applicable redemption date.

**Section 8.10 RESTORATION OF RIGHTS ON ABANDONMENT OF PROCEEDINGS.** In case the Trustee or any Holder shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or to such Holder, then, and in every such case, the Company, the Trustee and the Holders shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Holders shall continue as though no such proceedings had been taken.

**Section 8.11 WAIVER OF USURY, STAY OR EXTENSION LAWS.** The Company covenants (to the extent that it may lawfully do so) that it will 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 performance 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 IX**

### **CONCERNING THE TRUSTEE**

**Section 9.01 DUTIES AND RESPONSIBILITIES OF TRUSTEE.**

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

(b) No provisions 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:

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

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

(B) in the absence of bad faith or actual knowledge on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which 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 (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

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

(3) 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, pursuant to this Indenture, of the Holders of a majority in aggregate principal amount of the Notes of any one or more series, as provided herein, including, but not limited to, Section 8.07 hereof 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 Notes of such series.

(c) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 9.02 RELIANCE ON DOCUMENTS, OPINIONS, ETC. Except as otherwise provided in Section 9.01 hereof:

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(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, note 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 an Officers' Certificate (unless other evidence in respect thereof is herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

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

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

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

(f) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all Events of Default, 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, note or other paper or document, unless requested in writing to do so by the Holders of a majority in aggregate principal amount of the then outstanding Notes of any series; provided 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 this Indenture, the Trustee may require reasonable indemnity against such expense or liability as a condition to so proceeding;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys; provided that the Trustee shall not be liable for the conduct or acts of any such agent or attorney that shall have been appointed in accordance herewith with due care.

(h) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities thereunder, and to each agent, custodian and other person employed to act hereunder.

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(j) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 9.03 NO RESPONSIBILITY FOR RECITALS, ETC. The recitals contained herein and in the Notes (except in the certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with this Indenture.

Section 9.04 TRUSTEE, AUTHENTICATING AGENT, PAYING AGENT OR REGISTRAR MAY OWN NOTES. The Trustee and any Authenticating Agent or paying agent in its individual or other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Authenticating Agent or paying agent.

Section 9.05 MONEYS TO BE HELD IN TRUST. Subject to Section 5.05 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder, except the Trustee may allow and credit to the Company interest on any money received hereunder at such rate, if any, as may be agreed upon by the Company and the Trustee from time to time as may be permitted by law.

Section 9.06 COMPENSATION AND EXPENSES OF TRUSTEE. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing (which shall not be limited by any law in regard to the compensation of a trustee of an express trust), and 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 this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and agents, including any Authenticating Agents, and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from the Trustee's negligence or willful misconduct. The Company also covenants to indemnify each of the Trustee or any predecessor and their agents for, and to hold each of them harmless against, any claim, damage, loss, liability, cost or expense incurred without negligence or willful misconduct on the part of the party so indemnified and arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of each such party incurred in defending itself against any claim or liability. The obligations of the Company under this Section 9.06 to compensate the Trustee, to indemnify 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 Notes 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 any particular Notes. The provisions of this Section 9.06 shall survive termination of this Indenture and the resignation or removal of the Trustee.

Section 9.07 OFFICERS' CERTIFICATE AS EVIDENCE. Whenever in the administration of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or

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established prior to the taking, suffering or omitting of any action hereunder, such matter (unless other evidence in respect thereof is 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 Officers' 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 by it under this Indenture in reliance thereon.

Section 9.08 CONFLICTING INTEREST OF TRUSTEE. The Trustee shall be subject to and shall comply with the provisions of Section 310(b) of the TIA. Nothing in this Indenture shall be deemed to prohibit the Trustee or the Company from making any application permitted pursuant to such section.

Section 9.09 EXISTENCE AND ELIGIBILITY OF TRUSTEE. There shall at all times be a Trustee hereunder which Trustee shall at all times be a corporation organized and doing business under the laws of the United States or any State thereof or of the District of Columbia having a combined capital and surplus of at least \$50,000,000 and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by Federal or State authorities. If such corporation publishes reports of condition at least annually, pursuant to law or to the

requirements of the aforesaid authority, then for the purposes of this Section 9.09, the combined capital and surplus shall be deemed to be as set forth in its most recent report of condition so published. No obligor upon the Notes or Person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as Trustee. If at any time the Trustee shall cease to be eligible in accordance with this Section 9.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.10 hereof.

#### Section 9.10 RESIGNATION OR REMOVAL OF TRUSTEE.

(a) Pursuant to the provisions of this Article, the Trustee may at any time resign and be discharged of the trusts created by this Indenture by giving written notice to the Company specifying the day upon which such resignation shall take effect, and such resignation shall take effect immediately upon the later of the appointment of a successor trustee and such day.

(b) Any Trustee may be removed at any time with respect to the Notes of any series by an instrument or concurrent instruments in writing filed with such Trustee and signed and acknowledged by the Holders of a majority in aggregate principal amount of the then outstanding Notes of such series or by their attorneys in fact duly authorized.

(c) So long as no Event of Default has occurred and is continuing, and no event has occurred and is continuing that, with the giving of notice or the lapse of time or both, would become an Event of Default, the Company may remove any Trustee upon written notice to the Holder of each Note Outstanding and the Trustee and appoint a successor Trustee meeting the requirements of Section 9.09. The Company or the successor Trustee shall give notice to the Holders, in the manner provided in Section 15.10, of such removal and appointment within 30 days of such removal and appointment.

(d) If at any time (i) the Trustee shall cease to be eligible in accordance with Section 9.09 hereof and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, (ii) the Trustee shall fail to comply with Section 9.08 hereof after written request therefor by the Company or any such

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Holder, or (iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Trustee may be removed forthwith by an instrument or concurrent instruments in writing filed with the Trustee and either:

(1) signed by the Chairman, the President or any Vice President of the Company and attested by the Secretary or an Assistant Secretary of the Company; or

(2) signed and acknowledged by the Holders of a majority in principal amount of outstanding Notes or by their attorneys in fact duly authorized.

(e) Any resignation or removal of the Trustee shall not become effective until acceptance of appointment by the successor Trustee as provided in Section 9.11 hereof.

#### Section 9.11 APPOINTMENT OF SUCCESSOR TRUSTEE.

(a) If at any time the Trustee shall resign or be removed, the Company, by a Board Resolution, shall promptly appoint a successor Trustee.

(b) The Company shall provide written notice of its appointment of a Successor Trustee to the Holder of each Note Outstanding following any such appointment.

(c) If no appointment of a successor Trustee shall be made pursuant to Section 9.11(a) hereof within 60 days after appointment shall be required, any Noteholder or the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

(d) Any Trustee appointed under this Section 9.11 as a successor Trustee shall be a bank or trust company eligible under Section 9.09 hereof and qualified under Section 9.08 hereof.

#### Section 9.12 ACCEPTANCE BY SUCCESSOR TRUSTEE.

(a) Any successor Trustee appointed as provided in Section 9.11 hereof shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of any amounts then due it pursuant to Section 9.06 hereof, execute and deliver an instrument transferring to such successor Trustee

all the rights and powers of the Trustee so ceasing to act. Upon request of any such successor Trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee to secure any amounts then due it pursuant to Section 9.06 hereof.

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(b) No successor Trustee shall accept appointment as provided in this Section 9.12 unless at the time of such acceptance such successor Trustee shall be qualified under Section 9.08 hereof and eligible under Section 9.09 hereof.

(c) Upon acceptance of appointment by a successor Trustee as provided in this Section 9.12, the successor Trustee shall mail notice of its succession hereunder to all Holders of Notes as the names and addresses of such Holders appear on the registry books.

#### Section 9.13 SUCCESSION BY MERGER, ETC.

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

(b) If at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificates of the Trustee shall have; provided that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 9.14 LIMITATIONS ON RIGHTS OF TRUSTEE AS A CREDITOR. The Trustee shall be subject to, and shall comply with, the provisions of Section 311 of the TIA.

#### Section 9.15 AUTHENTICATING AGENT.

(a) There may be one or more Authenticating Agents appointed by the Trustee with the written consent of the Company, with power to act on its behalf and subject to the direction of the Trustee in the authentication and delivery of Notes in connection with transfers and exchanges under Sections 2.06, 2.07, 2.08, 2.13, 3.03, and 13.04 hereof, as fully to all intents and purposes as though such Authenticating Agents had been expressly authorized by those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by any Authenticating Agent pursuant to this Section 9.15 shall be deemed to be the authentication and delivery of such Notes "by the Trustee." Any such Authenticating Agent shall be a bank or trust company or other Person of the character and qualifications set forth in Section 9.09 hereof.

(b) Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor corporation is otherwise

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eligible under this Section 9.15, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent or such successor corporation.

(c) Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section 9.15, the Trustee may, with the written consent of the Company, appoint a successor Authenticating Agent, and upon so doing shall give written notice of such appointment to the Company and shall mail, in the manner provided in Section 15.10, notice of such appointment to the Holders of Notes.

(d) The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services, and the Trustee shall be entitled to be reimbursed for such payments, in accordance with Section 9.06 hereof.

(e) Sections 9.02, 9.03, 9.06, 9.07 and 9.09 hereof shall be applicable to any Authenticating Agent.

Section 9.16 TRUSTEE'S APPLICATION FOR INSTRUCTIONS FROM THE COMPANY. Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

## ARTICLE X

### CONCERNING THE NOTEHOLDERS

Section 10.01 ACTION TAKEN BY NOTEHOLDERS. Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Notes of any series may take any action, the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Noteholders in person or by agent or proxy appointed in writing, (b) by the record of such Noteholders voting in favor thereof at any meeting of Noteholders duly called and held in accordance with Article XI hereof, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders.

Section 10.02 PROOF OF EXECUTION BY NOTEHOLDERS.

(a) Subject to Sections 9.01, 9.02 and 11.05 hereof, proof of the execution of any instruments by a Noteholder or the agent or proxy for such Noteholder shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee

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or in such manner as shall be satisfactory to the Trustee. The ownership of Notes shall be proved by the register for the Notes maintained by the Trustee.

(b) The record of any Noteholders' meeting shall be proven in the manner provided in Section 11.06 hereof.

Section 10.03 PERSONS DEEMED ABSOLUTE OWNERS. Subject to Sections 2.04(f) and 10.01 hereof, the Company, the Trustee, any paying agent and any Authenticating Agent shall deem the person in whose name any Note shall be registered upon the register for the Notes to be, and shall treat such person as, the absolute owner of such Note (whether or not such Note shall be overdue) for the purpose of receiving payment of or on account of the principal and premium, if any, and interest on such Note, and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Authenticating Agent shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon any such Note to the extent of the sum or sums so paid.

Section 10.04 COMPANY-OWNED NOTES DISREGARDED. In determining whether the Holders of the requisite aggregate principal amount of outstanding Notes of any series have concurred in any direction, consent or waiver under this Indenture, Notes that are owned by the Company or any other obligor on the Notes or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Notes which a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith to third parties may be regarded as outstanding for the purposes of this Section 10.04 if the pledgee shall establish the pledgee's right to take action with respect to such Notes 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 the case of a dispute as to such right, the Trustee may rely upon an Opinion of Counsel and an Officers' Certificate to establish the foregoing.

Section 10.05 REVOCATION OF CONSENTS; FUTURE HOLDERS BOUND. Except as may be otherwise required in the case of a Global Note by the applicable rules and regulations of the Depository, at any time prior to the taking of any action by the Holders of the percentage in aggregate principal amount of the Notes of any series specified in this Indenture in connection with such action, any Holder of a Note, which has been included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at the corporate trust office of the Trustee and upon proof of ownership as provided in Section 10.02(a) hereof, revoke such action so far as it concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange, substitution or upon registration of transfer therefor, irrespective of whether or not any notation thereof is made upon such Note or such other Notes.

Section 10.06 RECORD DATE FOR NOTEHOLDER ACTS. If the Company shall solicit from the Noteholders any request, demand, authorization, direction, notice, consent, waiver or other act, the Company may, at its option, by

Board Resolution, fix in advance a record date for the determination of Noteholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or

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other act, 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 act may be given before or after the record date, but only the Noteholders of record at the close of business on the record date shall be deemed to be Noteholders for the purpose of determining whether Holders of the requisite aggregate principal amount of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other act, and for that purpose the outstanding Notes shall be computed as of the record date; provided that no such request, demand, authorization, direction, notice, consent, waiver or other act by the Noteholders on the record date shall be deemed effective unless it shall become effective pursuant to this Indenture not later than six months after the record date. Any such record date shall be at least 30 days prior to the date of the solicitation to the Noteholders by the Company.

## ARTICLE XI

### NOTEHOLDERS' MEETING

Section 11.01 PURPOSES OF MEETINGS. A meeting of Noteholders may be called at any time and from time to time pursuant to this Article XI for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to Article XIII;
- (b) to remove the Trustee pursuant to Article IX;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to Section 13.02 hereof; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes of any series, as the case may be, under any other provision of this Indenture or under applicable law.

Section 11.02 CALL OF MEETINGS BY TRUSTEE. The Trustee may at any time call a meeting of Holders of Notes to take any action specified in Section 11.01 hereof, to be held at such time and at such place as the Trustee shall determine. Notice of every such meeting of Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of the Notes that may be affected by the action proposed to be taken at such meeting in the manner provided in Section 15.10 hereof. Such notice shall be given not less than 20 nor more than 90 days prior to the date fixed for such meeting.

Section 11.03 CALL OF MEETINGS BY COMPANY OR NOTEHOLDERS. If at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Notes of all series then outstanding, considered as one class, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 11.01 hereof, by giving notice thereof as provided in Section 11.02 hereof.

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Section 11.04 QUALIFICATIONS FOR VOTING. To be entitled to vote at any meetings of Noteholders a Person shall (a) be a Holder of one or more Notes affected by the action proposed to be taken or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more such Notes. The only Persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives (including employees) of the Trustee and its counsel and any representatives (including employees) of the Company and its counsel.

Section 11.05 REGULATIONS.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by the Noteholders as provided in Section 11.03 hereof, in which case the Company or Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by the Holders of a majority in aggregate principal amount of the Notes present in person or by proxy at the meeting.

(c) Subject to Section 10.04 hereof, at any meeting each Noteholder or proxy shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by such Noteholder; provided that no vote shall be cast or counted at any meeting in respect of any Note determined to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by such chairman or instruments in writing as aforesaid duly designating such chairman as the person to vote on behalf of other Noteholders. At any meeting of Noteholders duly called pursuant to Section 11.02 or 11.03 hereof, the presence of persons holding or representing Notes in an aggregate principal amount sufficient to take action on any business for the transaction for which such meeting was called shall constitute a quorum. Any meeting of Noteholders duly called pursuant to Section 11.02 or 11.03 hereof may be adjourned from time to time by the Holders of a majority in aggregate principal amount of the Notes present in person or by proxy at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 11.06 VOTING. The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballots on which shall be subscribed the signatures of the Holders of Notes or of their representatives by proxy and the principal amount of Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of such meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 11.02 hereof. The record shall show the aggregate principal amount of the Notes voting in favor of or

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against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee and the Trustee shall have the ballots taken at the meeting attached to such duplicate. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 11.07 RIGHTS OF TRUSTEE OR NOTEHOLDERS NOT DELAYED. Nothing in this Article XI shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders of Notes under any of the provisions of this Indenture or of the Notes.

## **ARTICLE XII**

### **CONSOLIDATION, MERGER, SALE, TRANSFER OR CONVEYANCE**

Section 12.01 COMPANY MAY CONSOLIDATE, ETC. ONLY ON CERTAIN TERMS. The Company shall not consolidate with or merge into any other corporation or sell, transfer, lease or otherwise dispose of its properties as or substantially as an entirety to any Person unless the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance or transfer and the supplemental indenture referred to in clause (b) below comply with this Article XII and that all conditions precedent herein provided for have been complied with, and the corporation formed by such consolidation or into which the Company is merged or the Person which receives such properties pursuant to such sale, transfer, lease or other disposition (a) shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; (b) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and premium and interest on all of the Notes and the performance of every covenant of this Indenture on the part of the Company to be performed or observed; and (c) immediately after giving effect to the transaction, no Event of Default or event that, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing

Section 12.02 SUCCESSOR CORPORATION SUBSTITUTED. Upon any consolidation or merger, or any sale, transfer, lease or other disposition of the properties of the Company substantially as an entirety in accordance with Section 12.01 hereof, the successor corporation formed by such consolidation or into which the Company is merged or the Person to which such sale, transfer or other disposition is made shall succeed to, and be substituted for and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation or Person had been named as the Company herein and the Company shall be released from all obligations hereunder.

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## **ARTICLE XIII**

### **SUPPLEMENTAL INDENTURES**

Section 13.01 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF NOTEHOLDERS.

(a) The Company, when authorized by Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto, without consent of holders of the Notes, for one or more of the



following purposes:

- (1) to make such provision in regard to matters or questions arising under this Indenture as may be necessary or desirable, and not inconsistent with this Indenture or prejudicial to the interests of the Holders in any material respect, for the purpose of supplying any omission, curing any ambiguity, or curing, correcting or supplementing any defective or inconsistent provision;
- (2) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only when there is no Note outstanding created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision or such change or elimination is applicable only to Notes issued after the effective date of such change or elimination;
- (3) to establish the form of Notes of any series as permitted by Section 2.01 hereof or to establish or reflect any terms of any Note of any series determined pursuant to Section 2.05 hereof;
- (4) to evidence the succession of another corporation to the Company as permitted hereunder, and the assumption by any such successor of the covenants of the Company herein and in the Notes;
- (5) to grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority;
- (6) to permit the Trustee to comply with any duties imposed upon it by law;
- (7) to specify further the duties and responsibilities of, and to define further the relationships among, the Trustee, any Authenticating Agent and any paying agent, and to evidence the succession of a successor Trustee as permitted hereunder;
- (8) to add to the covenants of the Company for the benefit of the Holders of one or more series of Notes, to add to the security for all of the Notes, to surrender a right or power conferred on the Company herein or to add any Event of Default with respect to one or more series of Notes; and
- (9) to make any other change that is not prejudicial to the Holders.

(b) The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any

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property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(c) Any supplemental indenture authorized by this Section 13.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 13.02 hereof.

#### Section 13.02 SUPPLEMENTAL INDENTURES WITH CONSENT OF NOTEHOLDERS.

(a) With the consent (evidenced as provided in Section 10.01 hereof) of the Holders of a majority in aggregate principal amount of the Notes of all series at the time outstanding, considered as one class, the Company, when authorized by Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of any supplemental indenture or of modifying or waiving in any manner the rights of the Noteholders; provided, however, that if there shall be Notes of more than one series Outstanding hereunder and if a proposed supplemental indenture shall directly affect the rights of the Holders of Notes of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Notes of all series so directly affected, considered as one class, shall be required; provided further that no such supplemental indenture shall:

- (1) change the Stated Maturity of any Note, or reduce the rate (or change the method of calculation thereof) or extend the time of payment of interest thereon, or reduce the principal amount thereof or any premium thereon, or change the coin or currency in which the principal of any Note or any premium or interest thereon is payable, or change the date on which any Note may be redeemed or adversely affect the rights of the Noteholders to institute suit for the enforcement of any payment of principal of or any premium or interest on any Note, in each case without the consent of the Holder of each Note so affected; or
- (2) modify this Section 13.02(a) or reduce the aforesaid percentage of Notes, the Holders of which are required to consent to any such supplemental indenture or to reduce the percentage of Notes, the Holders of which are required to waive Events of Default, in each case, without the consent of the Holders of all of the Notes affected thereby then outstanding.

(b) Upon the request of the Company, accompanied by a copy of the Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders 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.

(c) A supplemental indenture which changes, waives or eliminates any covenant or other provision of this Indenture (or any supplemental indenture) which has expressly been included solely for the benefit of one or more series of Notes, or which modifies the rights of the Holders of Notes of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Notes of any other series.

(d) It shall not be necessary for the consent of the Holders of Notes under this Section 13.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(e) Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to this Section 13.02, the Trustee shall give notice in the manner provided in Section 15.10 hereof, setting forth in general terms the substance of such supplemental indenture, to all Noteholders. Any failure of the Trustee to give such notice or any defect therein shall not, however, in any way impair or affect the validity of any such supplemental indenture.

**Section 13.03 COMPLIANCE WITH TRUST INDENTURE ACT; EFFECT OF SUPPLEMENTAL INDENTURES.** Any supplemental indenture executed pursuant to this Article XIII shall comply with the TIA. Upon the execution of any supplemental indenture pursuant to this Article XIII, the 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 Noteholders 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 13.04 NOTATION ON NOTES.** Notes of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article XIII may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes of any series so modified as approved by the Trustee and the Board of Directors with respect to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Notes of such series then outstanding.

**Section 13.05 EVIDENCE OF COMPLIANCE OF SUPPLEMENTAL INDENTURE TO BE FURNISHED TRUSTEE.** The Trustee, subject to Sections 9.01 and 9.02 hereof, shall be entitled to receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article XIII and that all conditions precedent to its execution have been met.

## **ARTICLE XIV**

### **IMMUNITY OF INCORPORATORS,**

### **STOCKHOLDERS, OFFICERS AND DIRECTORS; LIMITATION OF LIABILITY**

**Section 14.01 INDENTURE AND NOTES SOLELY CORPORATE OBLIGATIONS.** No recourse for the payment of the principal of or any premium or interest on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company, contained in this Indenture, or in any supplemental indenture, or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any 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 all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the Notes.

**Section 14.02 LIMITATION OF LIABILITY OF TRUSTEE.** In no case shall the Bank (or any Person acting as successor trustee under the Indenture) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of the Company hereunder or in any of the other documents contemplated hereby, all such liability, if any, being expressly waived by the parties hereto and any person claiming by, through or under such party.

## **ARTICLE XV**

## MISCELLANEOUS PROVISIONS

Section 15.01 PROVISIONS BINDING ON COMPANY'S SUCCESSORS. All the covenants, stipulations, promises and agreements made by the Company in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 15.02 OFFICIAL ACTS BY SUCCESSOR CORPORATION. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the lawful successor of the Company.

Section 15.03 NOTICES. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Noteholders on the Company may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Company with the Trustee) at the Principal Executive Offices of the Company, to the attention of the Secretary. Any notice, direction, request or demand by any Noteholder or the Company to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made to, or sent by registered mail to, the Corporate Trust Officer of the Trustee to the attention of the Corporate Trust Administration, but shall be deemed effective only upon actual receipt.

Section 15.04 GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. This Indenture and each Note shall be governed by and deemed to be a contract under, and construed in accordance with, the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State without regard to conflicts of law principles thereof. Any action or proceeding arising out of or relating to this Indenture or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the City of New York, and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in such courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court has been brought in an inconvenient forum. Service of any process, summons, notice or document by mail to the address of the Principal Executive Offices of the Company shall be effective service of process upon the

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Company for any suit, action or other proceeding brought in any such court. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT OF TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 15.05 EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT.

(a) Upon any application or demand by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture (including any covenants compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificates delivered pursuant to Section 6.06 hereof) shall include (1) a statement that each Person making such certificate or opinion has read such covenant or condition and the definitions relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of each such Person, such Person has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of each such Person, such condition or covenant has been complied with.

(c) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(d) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such certificate or opinion is based are erroneous. Any such certificate or opinion of counsel delivered under the Indenture may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such person knows, or in the exercise of reasonable care should know, that the certificate or opinion of representations

with respect to such matters are erroneous. Any opinion of counsel delivered hereunder may contain standard exceptions and qualifications reasonably satisfactory to the Trustee.

(e) Any certificate, statement or opinion of any officer of the Company, or of counsel, may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an independent public accountant or firm of accountants, unless such officer or counsel, as the case may be, knows that the certificate or opinions or representations

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with respect to the accounting matters upon which the certificate, statement or opinion of such officer or counsel may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate or opinion of any firm of independent public accountants filed with the Trustee shall contain a statement that such firm is independent.

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

Section 15.06 BUSINESS DAYS. Unless otherwise provided pursuant to Section 2.05(c) hereof, in any case where the date of Maturity of the principal of or any premium or interest on any Note or the date fixed for redemption of any Note is not a Business Day, then payment of such principal or any premium or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of Maturity or the date fixed for redemption, and, in the case of timely payment thereof, no interest shall accrue for the period from and after such Interest Payment Date or the date on which the principal or premium of the Note is required to be paid.

Section 15.07 TRUST INDENTURE ACT TO CONTROL. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the TIA, such required provision of the TIA shall govern.

Section 15.08 TABLE OF CONTENTS, HEADINGS, ETC. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 15.09 EXECUTION IN COUNTERPARTS. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 15.10 MANNER OF MAILING NOTICE TO NOTEHOLDERS.

(a) Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or the Company to or on the Holders of Notes, as the case may be, shall be given or served by first-class mail, postage prepaid, addressed to the Holders of such Notes at their last addresses as the same appear on the register for the Notes referred to in Section 2.06, and any such notice shall be deemed to be given or served by being deposited in a post office letter box in the form and manner provided in this Section 15.10. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give notice to any Holder by mail, then such notification to such Holder as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

(b) The Company shall also provide any notices required under this Indenture by publication, but only to the extent that such publication is required by the TIA, the rules and regulations of the Commission or any securities exchange upon which any series of Notes is listed.

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Section 15.11 APPROVAL BY TRUSTEE OF COUNSEL. Wherever the Trustee is required to approve counsel who is to furnish evidence of compliance with conditions precedent in this Indenture, such approval by the Trustee shall be deemed to have been given upon the taking of any action by the Trustee pursuant to and in accordance with the certificate or opinion so furnished by such counsel.

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IN WITNESS WHEREOF, KANSAS CITY POWER & LIGHT COMPANY has caused this Indenture to be signed and acknowledged by its Vice President of Finance, Chief Financial Officer, and Treasurer, and attested by its Senior Vice President - Corporate Services and Secretary, and THE BANK OF NEW YORK has caused this Indenture to be signed and acknowledged by its duly authorized officer, as of the day and year first written above.

KANSAS CITY POWER & LIGHT COMPANY

By \_\_\_\_\_

ATTEST:

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Corporate Secretary

THE BANK OF NEW YORK,  
AS TRUSTEE

By

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Vice President

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KANSAS CITY POWER & LIGHT COMPANY  
 AND  
 THE BANK OF NEW YORK  
 TRUSTEE  
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FORM OF INDENTURE  
 (FOR SUBORDINATED DEBT SECURITIES)  
 DATED AS OF \_\_\_\_\_, 2003

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CROSS REFERENCE SHEET SHOWING THE LOCATION IN THE INDENTURE OF THE PROVISIONS INSERTED CORRELATIVE TO SECTIONS 310 THROUGH 318(a), INCLUSIVE, OF THE TRUST INDENTURE ACT OF 1939

SECTION OF ACT	INDENTURE SECTION
310 (a)(1)	9.09
(a)(2)	9.09
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	9.09
(b)	9.08
(c)	Not Applicable
311 (a)	9.14
(b)	9.14
(c)	Not Applicable
312 (a)	7.01 and 7.02(a)
(b)	7.02(b)
(c)	7.02(c)

313	(a)	7.04(a)
	(b)	7.04(b)
	(c)	7.04(d)
	(d)	7.04(c)
314	(a)	7.03 and 6.06
	(b)	6.05
	(c)(1)	1.03 and 16.05
	(c)(2)	1.03 and 16.05
	(c)(3)	Not Applicable
	(d)	1.03 and 4.06
	(e)	16.06(b)
	(f)	Not Applicable
315	(a)	9.01
	(b)	8.08
	(c)	9.01(a)
	(d)	9.01(b)
	(e)	8.09
316	(a)	8.07 and 10.04
	(b)	8.04(b) and 13.02
	(c)	10.06
317	(a)(1)	8.02(b)
	(a)(2)	8.02(c)
	(b)	5.02 and 6.04
318	(a)	16.08

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NOTE: This Cross Reference Sheet is not, for any purpose, deemed to be a part of the Indenture.

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TESTIMONIUM

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ACKNOWLEDGMENTS

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THIS INDENTURE, dated as of \_\_\_\_\_, 2003, between KANSAS CITY POWER & LIGHT COMPANY, a corporation duly organized and existing under the laws of the State of Missouri (the "COMPANY"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "TRUSTEE").

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured subordinated debentures, notes or other evidences of indebtedness (the "Notes"), to be issued in one or more series as in this Indenture provided; and

WHEREAS, all acts and things necessary to make this Indenture a valid agreement according to its terms have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the premises, of the purchase and acceptance of the Notes by the holders thereof and of the sum of \$1 duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Notes or any series thereof, as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01 GENERAL.

(a) The terms defined in this Article I (whether or not capitalized and except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto or Company Order (as hereinafter defined) shall have the respective meanings specified in this Article I.

(b) Trust Securities related to a particular series of Notes means the series of Trust Securities the proceeds of the sale of which were loaned to the Company in exchange for such series of Notes, and the guarantee related to such series of Trust Securities means the guarantee pursuant to which the Company has guaranteed, to the extent stated therein, the payment of distributions and certain other amounts with respect to such series of Trust Securities.

(c) All accounting terms used herein and not expressly defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles in the United States of America, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date of such computation; PROVIDED, that when two or more principles are so generally accepted, it shall mean that set of principles consistent with those in use by the Company.

#### Section 1.02 TRUST INDENTURE ACT.

(a) Whenever this Indenture refers to a provision of the Trust Indenture Act of 1939 (the "TIA"), such provision is incorporated by reference in and made a part of this Indenture.

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(b) Unless otherwise indicated, all terms used in this Indenture that are defined by the TIA, defined by the TIA by reference to another statute or defined by a rule of the Commission under the TIA shall have the meanings assigned to them in the TIA or such statute or rule as in force on the date of execution of this Indenture.

(c) The Company and the Trustee agree to comply with the TIA notwithstanding any exemption that may be available thereunder.

#### Section 1.03 DEFINITIONS. For purposes of this Indenture, the following terms shall have the following meanings.

"AUTHENTICATING AGENT" shall mean any agent of the Trustee which shall be appointed and acting pursuant to Section 9.15 hereof.

"AUTHORIZED AGENT" shall mean any agent of the Company designated as such by an Officers' Certificate delivered to the Trustee.

"BOARD OF DIRECTORS" shall mean the Board of Directors of the Company or the Executive Committee of such Board or any other duly authorized committee of such Board.

"BOARD RESOLUTION" shall mean a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"BUSINESS DAY" shall mean any day other than a day on which banking institutions in New York, New York are authorized or required by law to close. .

"COMMISSION" shall mean the United States Securities and Exchange Commission, or if at any time hereafter the Commission is not existing or performing the duties now assigned to it under the TIA, then the body performing such

duties.

"COMPANY" shall mean the corporation named as the "Company" in the first paragraph of this Indenture, and its successors and assigns permitted hereunder.

"COMPANY ORDER" shall mean a written order or certificate signed in the name of the Company by one of the Chairman, the President, any Vice President, the Treasurer or an Assistant Treasurer of the Company, and delivered to the Trustee. At the Company's option, a Company Order may take the form of a supplemental indenture to this Indenture.

"CORPORATE TRUST OFFICE OF THE TRUSTEE", or other similar term, shall mean the corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be principally administered, which officer is presently located at 101 Barclay Street, New York, New York 10286.

"DEBT" shall mean any outstanding funded obligations of the Company for money borrowed, whether or not evidenced by notes, debentures, bonds or other securities, reimbursement obligations under letters of credit, or guarantees of any such obligations issued by another Person.

"DEPOSITARY" shall mean, unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, The Depository Trust Company, New York, New York ("DTC"), or any

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successor thereto registered and qualified as a clearing agency under the Securities Exchange Act of 1934, or other applicable statute or regulation.

"EVENT OF DEFAULT" shall mean any event specified in Section 8.01 hereof, continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

"GLOBAL NOTE" shall mean a Note that, pursuant to Section 2.05 hereof, is delivered to the Depository or pursuant to the instructions of the Depository and that shall be registered in the name of the Depository or its nominee.

"GUARANTEE" shall mean a Guarantee Agreement, if any, executed and delivered by the Company for the benefit of the holders from time to time of all or a portion of the Trust Securities of a Securities Trust.

"HOLDER", "HOLDER OF NOTES" or "NOTEHOLDER" shall mean any Person in whose name at the time a particular Note is registered on the books of the Trustee kept for that purpose in accordance with the terms hereof.

"INDENTURE" shall mean this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented, and shall include the terms and provisions of a particular series of Notes established pursuant to Section 2.05 hereof.

"INTEREST PAYMENT DATE", when used with respect to any Note, shall mean (a) each date designated as such for the payment of interest on such Note specified in a Company Order pursuant to Section 2.05 hereof (provided that the first Interest Payment Date for such Note, the Original Issue Date of which is after a Regular Record Date but prior to the respective Interest Payment Date, shall be the Interest Payment Date following the next succeeding Regular Record Date), (b) a date of Maturity of such Note and (c) only with respect to defaulted interest on such Note, the date established by the Trustee for the payment of such defaulted interest pursuant to Section 2.11 hereof.

"MATURITY," when used with respect to any Note, shall mean the date on which the principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity thereof or by declaration of acceleration, redemption or otherwise.

"NOTE" or "NOTES" has the meaning stated in the first recital of this Indenture and more particularly means any note or notes, as the case may be, authenticated and delivered under this Indenture, including any Global Note.

"OFFICERS' CERTIFICATE" when used with respect to the Company, shall mean a certificate signed by one of the Chairman, the President, any Vice President, and by the Treasurer, any Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company; provided, that no individual shall be entitled to sign in more than one capacity.

"OPINION OF COUNSEL" shall mean an opinion in writing signed by legal counsel, who may be an employee of the Company, meeting the applicable requirements of Section 16.05 hereof. If the Indenture requires the delivery of an Opinion of Counsel to the Trustee, the text and substance of which has been previously delivered to the Trustee, the Company may satisfy such requirement by the delivery by the legal counsel that delivered such previous Opinion of Counsel of a letter to the Trustee to the effect that the Trustee may rely on such previous Opinion of Counsel as if such Opinion of Counsel was dated and delivered the date delivery of such Opinion

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of Counsel is required. Any Opinion of Counsel may contain reasonable conditions and qualifications satisfactory to the Trustee.

"ORIGINAL ISSUE DATE" shall mean for a Note, or portions thereof, the date upon which it, or such portion, was issued by the Company pursuant to this Indenture and authenticated by the Trustee (other than in connection with a transfer, exchange or substitution).

"OUTSTANDING", when used with reference to Notes, shall, subject to Section 10.04 hereof, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (a) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Notes, or portions thereof, for the payment or redemption of which moneys in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company), provided that if such Notes are to be redeemed prior to the Stated Maturity thereof, notice of such redemption shall have been given as provided in Article III, or provisions satisfactory to the Trustee shall have been made for giving such notice;
- (c) Notes, or portions thereof, that have been paid and discharged or are deemed to have been paid and discharged pursuant to the provisions of this Indenture; and
- (d) Notes in lieu of or in substitution for which other Notes shall have been authenticated and delivered, or which have been paid, pursuant to Section 2.07 hereof.

"PERIODIC OFFERING" means an offering of Notes of a series from time to time the specific terms of which Notes, including without limitation the rate or rates of interest, if any, thereon, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Notes.

"PERSON" shall mean any individual, corporation, company partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or government or any agent or political subdivision thereof.

"PRINCIPAL EXECUTIVE OFFICES OF THE COMPANY" shall mean 1201 Walnut, Kansas City, Missouri 64106, or such other place where the main corporate offices of the Company are located as designated in writing to the Trustee by an Authorized Agent.

"REGULAR RECORD DATE" shall mean, unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, for an Interest Payment Date for a particular Note (except for an Interest Payment Date with respect to defaulted interest on such Note) (a) the fifteenth day next preceding each Interest Payment Date (unless the Interest Payment Date is the date of Maturity of such Note, in which event, the Regular Record Date shall be as described in clause (b) hereof) and (b) the date of Maturity of such Note.

"RESPONSIBLE OFFICER" or "RESPONSIBLE OFFICERS" when used with respect to the Trustee shall mean one or more of the following: any assistant vice president, any assistant treasurer, any trust officer, vice president, or any other officer or vice president of the Trustee

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customarily performing 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 and who shall have direct responsibility for the administration of this Indenture.

"SECURITIES TRUST" shall mean any statutory trust formed by the Company or an Affiliate to issue Trust Securities, the proceeds of which will be used to purchase Notes of one or more series.

"SENIOR INDEBTEDNESS" shall mean all obligations (other than non-recourse obligations, the indebtedness issued under this Indenture and other indebtedness which is either effectively by its terms or expressly made subordinate to or pari passu with the indebtedness issued under this Indenture) of, or guaranteed (except to the extent the Company's payment obligations under any such guarantee are subordinate to or pari passu with the indebtedness issued under this Indenture) or assumed by, the Company for borrowed money, including both senior and subordinated indebtedness for borrowed money (other than indebtedness issued under this Indenture or other indebtedness which is expressly made subordinate to or pari passu with the indebtedness issued under this indenture), or for the payment of money relating to any lease which is capitalized on the balance sheet of the Company in accordance with generally accepted accounting principles as in effect from time to time, or evidenced by bonds, debentures, notes, or other similar instruments, and in each case, amendments, renewals, extensions, modifications, and refundings of any such indebtedness or obligations with Senior Indebtedness, whether existing as of the date of this Indenture or subsequently incurred by the Company.

"SPECIAL RECORD DATE" shall mean, with respect to any Note, the date established by the Trustee in connection with the payment of defaulted interest on such Note pursuant to Section 2.11 hereof.

"STATED MATURITY" shall mean with respect to any Note, the last date on which principal on such Note becomes due and payable as therein or herein provided, other than by declaration of acceleration or by redemption.

"SUBSIDIARY" shall mean, as to any Person, any corporation or other entity of which at least a majority of the securities or other ownership interest having ordinary voting power (absolutely or contingently) for the election of directors or other Persons performing similar functions are at the time owned directly or indirectly by such Person.

"TRUST AGREEMENT", when used with respect to a Securities Trust, means the agreement or instrument that governs the affairs of such Securities Trust.

"TRUSTEE" shall mean The Bank of New York and, subject to Article IX, shall also include any successor Trustee.

"TRUST SECURITIES" shall mean the securities issued by a Securities Trust evidencing the entire beneficial interest therein.

"U.S. GOVERNMENT OBLIGATIONS" shall mean (i) direct non-callable obligations of, or non-callable obligations guaranteed as to timely payment of principal and interest by, the United States of America or obligations of a person controlled or supervised by and acting as an agency or instrumentality thereof for the payment of which obligations or guarantee the full faith and credit of the United States is pledged or (ii) certificates or receipts representing direct ownership interests

in obligations or specified portions (such as principal or interest) of obligations described in clause (i) above, which obligations are held by a custodian in safekeeping in a manner satisfactory to the Trustee.

## ARTICLE II

### FORM, ISSUE, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

#### Section 2.01 FORMS GENERALLY.

(a) The Notes shall be in such form as shall be established by a Company Order pursuant to Section 2.05(c) hereof with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with applicable rules of any securities exchange or of the Depositary or with applicable law or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution of such Notes.

(b) The definitive Notes shall be typed, printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Notes, as evidenced by their execution of such Notes.

Section 2.02 FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION. The Trustee's certificate of authentication on all Notes shall be in substantially the following form:

#### Trustee's Certificate of Authentication

This Note is one of the Notes of the series herein designated, described or provided for in the within-mentioned Indenture.

The Bank of New York, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Section 2.03 AMOUNT UNLIMITED. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited, subject to compliance with the provisions of this Indenture.

#### Section 2.04 DENOMINATIONS, DATES, INTEREST PAYMENT AND RECORD DATES.

(a) The Notes of each series shall be issuable in registered form without coupons in denominations of \$1,000 and integral multiples thereof or such other amount or amounts as may be authorized by the Board of Directors or a Company Order pursuant to a Board Resolution or in one or more indentures supplemental hereto; provided, that the principal amount of a Global Note shall not exceed \$500,000,000 unless otherwise permitted by the Depositary.

(b) Each Note shall be dated and issued as of the date of its authentication by the Trustee, and shall bear an Original Issue Date; each Note issued upon transfer, exchange or



substitution of a Note shall bear the Original Issue Date or Dates of such transferred, exchanged or substituted Note, subject to the provisions of Section 2.13(d) hereof.

(c) Each Note shall accrue interest from the later of (1) its Original Issue Date or the date specified in such Note and (2) the most recent date to which interest has been paid or duly provided for with respect to such Note until the principal of such Note is paid or made available for payment, and interest on each Note shall be payable on each Interest Payment Date after the Original Issue Date.

(d) Each Note shall mature on a Stated Maturity specified in the Note. The principal amount of each outstanding Note shall be payable on the Stated Maturity date specified therein.

(e) Unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, interest on each of the Notes shall be calculated on the basis of a 360-day year of twelve 30-day months (and for any partial periods shall be calculated on the basis of the number of days elapsed in a 360-day year of twelve 30-day months) and shall be computed at a fixed rate until the Stated Maturity of such Notes. The method of computing interest on any Notes not bearing a fixed rate of interest shall be set forth in a Company Order pursuant to Section 2.05 hereof. Unless otherwise specified in a Company Order pursuant to Section 2.05 hereof, principal, interest and premium on the Notes shall be payable in the currency of the United States.

(f) Except as provided in the following sentence, the Person in whose name any Note is registered at the close of business on any Regular Record Date or Special Record Date with respect to an Interest Payment Date for such Note shall be entitled to receive the interest payable on such Interest Payment Date notwithstanding the cancellation of such Note upon any registration of transfer, exchange or substitution of such Note subsequent to such Regular Record Date or Special Record Date and prior to such Interest Payment Date. Any interest payable at Maturity shall be paid to the Person to whom the principal of such Note is payable.

(g) So long as the Trustee is the registrar and paying agent, the Trustee shall, as soon as practicable but no later than the Regular Record Date preceding each applicable Interest Payment Date, provide to the Company a list of the principal, interest and premium to be paid on Notes on such Interest Payment Date. The Trustee shall assume responsibility for withholding taxes on interest paid as required by law except with respect to any Global Note.

#### Section 2.05 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

(a) The Notes shall be executed on behalf of the Company by one of its Chairman, President, or any Vice President and by its Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company. The signature of any of these officers on the Notes may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Note that has been duly authenticated and delivered by the Trustee.

(b) Notes bearing the manual or facsimile signatures of individuals who were at the time of execution the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes of any series executed by the Company to the Trustee

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for authentication, together with or preceded by one or more Company Orders for the authentication and delivery of such Notes, and the Trustee in accordance with any such Company Order shall authenticate and make available for delivery such Notes; provided, however, that, with respect to Notes of a series subject to a Periodic Offering, (A) such Company Order may be delivered by the Company to the Trustee prior to the delivery to the Trustee of such Notes for authentication and delivery, (B) the Trustee shall authenticate and deliver Notes of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount established for such series, all pursuant to a further Company Order or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by such further Company Order, (C) the Stated Maturity or Maturities, Original Issue Date or Dates, interest rate or rates and any other terms of Notes of such series shall be determined by such further Company Order or pursuant to such procedures and (D) if provided for in such procedures, such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Such Company Order shall specify the following with respect to each series of Notes: (i) the title of the Notes of such series (which shall distinguish the Notes of such series from Notes of all other series) and any limitations on the aggregate principal amount of the Notes to be issued as part of such series, (ii) the Original Issue Date for such series, (iii) the Stated Maturity of Notes of such series, (iv) the interest rate or rates, or method of calculation of such rate or rates, for such series and the date from which such interest will accrue, (v) the terms, if any, regarding the optional or mandatory redemption of such series, including redemption date or dates of such series, if any, and the price or prices applicable to such redemption, (vi) whether or not the Notes of such series shall be issued in whole or in part in the form of one or more Global Notes and, if so, the identity of the Depository for such Global Note or Global Notes (vii) the denominations in which the Notes of such series will be issued, (viii) the maximum annual interest rate, if any, of the Notes permitted for such series, (ix) the

period or periods within which, the price or prices at which and the terms and conditions upon which such series may be repaid, in whole or in part, at the option of the Holder thereof, (x) the establishment of any office or agency pursuant to Section 6.02 hereof, (xi) any addition, deletion or modification to the Events of Default specified in Section 8.01 hereof, with respect to the Notes of such series, and any covenants of the Company for the benefit of the Holders of the Notes of such series set forth in Articles VI and XII hereof, (xii) the terms, if any, pursuant to which the Notes of such series may be converted into or exchanged for shares of capital stock or other securities of the Company, (xiii) the obligation, if any, of the Company to redeem, purchase or repay the Notes of such series, including, but not limited to, pursuant to any sinking fund or analogous provision or at the option of the Holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which the Notes of such series shall be redeemed, purchased or repaid pursuant to such obligation, (xiv) any remarketing features of the Notes of such series, (xv) any collateral, security, assurance or guarantee for the Notes of such series, (xvi) if other than the principal amount thereof, the portion of the principal amount of the Notes of such series payable upon declaration of acceleration of the maturity of the Notes of such series, (xvii) the securities exchange(s), if any, on which the debt securities will be listed, (xviii) any interest deferral or extension provisions, (xix) the applicability of or any change in the subordination provisions for the Notes of such series, (xx) the terms of any warrants the Company may issue to purchase the Notes of such series, (xxi) the right, if any, of the Company to extend the interest payment periods of such series of Notes, including the maximum duration of any such extension or extensions, the additional interest, if any, payable on such series of Notes and any notice that must be given upon the exercise of such right to extend interest payment periods, and (xxii) any other terms of such series not inconsistent with this Indenture. With respect to Notes of a series subject to a Periodic Offering, such Company Order may provide general terms or parameters for Notes of such series and provide either that the specific terms of particular Notes of such series shall be specified in a

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further Company Order or that such terms shall be determined by the Company or its agents in accordance with such further Company Order as contemplated by the proviso of the first sentence of this Section 2.05(c). Prior to authenticating Notes of any series, and in accepting the additional responsibilities under this Indenture in relation to such Notes, the Trustee shall receive from the Company the following at or before the issuance of such series of Notes, and (subject to Section 9.01 hereof) shall be fully protected in relying upon, unless and until such documents have been superseded or revoked prior to such issuance:

(1) A Board Resolution authorizing such Company Order or Orders and, if the form of Notes is established by a Board Resolution or a Company Order pursuant to a Board Resolution, a copy of such Board Resolution;

(2) At the option of the Company, either an Opinion of Counsel or a letter addressed to the Trustee permitting it to rely on an Opinion of Counsel, stating substantially the following subject to customary qualifications and exceptions:

(A) if the form of such Notes has been established by or pursuant to a Board Resolution, a Company Order pursuant to a Board Resolution, or in a supplemental indenture as permitted by Section 2.01 hereof, that such form has been established in conformity with this Indenture;

(B) that this Indenture has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and by an implied covenant of reasonableness, good faith and fair dealing;

(C) that this Indenture is qualified to the extent necessary under the TIA or, if not so required, that this Indenture is not required to be qualified under the TIA;

(D) that such Notes have been duly authorized and executed by the Company, and when authenticated by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and by an implied covenant of reasonableness, good faith and fair dealing;

(E) that the issuance of such Notes will not result in any default under this Indenture;

(F) that all consents or approvals of the Commission (or any successor agency) under the Public Utility Holding Company Act of 1935 and of any other federal or state regulatory agency required in connection with the

Company's execution and delivery of this Indenture and such Notes have been obtained and are in full force and effect (except that no statement need be made with respect to state securities laws); and

(G) that all conditions that must be met by the Company to issue Notes under this Indenture have been met.

(3) An Officers' Certificate stating that (i) the Company is not, and upon the authentication by the Trustee of such Notes, will not be in default under any of the terms or covenants contained in this Indenture and (ii) all conditions that must be met by the Company to issue Notes under this Indenture have been met.

(d) No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of an authorized officer, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

The Trustee shall have the right to decline to authenticate and deliver any Notes under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such actions would expose the Trustee to personal liability to existing Holders.

(e) If all Notes of a series are not to be authenticated and issued at one time in connection with a Periodic Offering, the Company shall not be required to deliver the Company Order, Board Resolution, Officers' Certificate and Opinion of Counsel (including any of the foregoing that would be otherwise required pursuant to Section 15.05 hereof) described in Section 2.05(c) hereof at or prior to the authentication of each Note of such series, if such items are delivered at or prior to the time of authentication of the first Note of such series to be authenticated and issued.

#### Section 2.06 EXCHANGE AND REGISTRATION OF TRANSFER OF NOTES.

(a) Subject to Section 2.13 hereof, Notes of any series may be exchanged for one or more new Notes of the same series of any authorized denominations and of a like aggregate principal amount, series and Stated Maturity and having the same terms and Original Issue Date. Notes to be exchanged shall be surrendered at any of the offices or agencies to be maintained pursuant to Section 6.02 hereof, and the Trustee shall authenticate and deliver in exchange therefor the Note or Notes of such series which the Noteholder making the exchange shall be entitled to receive.

(b) The Trustee shall keep, at one of said offices or agencies, a register or registers in which, subject to such reasonable regulations as it may prescribe, the Trustee shall register or cause to be registered Notes and shall register or cause to be registered the transfer of Notes as in this Article II provided. Such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times, such register shall be open for inspection by the Company. Upon due presentment for registration of transfer of any Note at any such office or agency, the Company shall execute and the Trustee shall register, authenticate and deliver in the name of the transferee or transferees one or more

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new Notes of any authorized denominations and of a like aggregate principal amount, series and Stated Maturity and having the same terms and Original Issue Date.

(c) All Notes presented for registration of transfer or for exchange, redemption or payment shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee and duly executed by the Holder or the attorney in fact of such Holder duly authorized in writing.

(d) No service charge shall be made for any exchange or registration of transfer of Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith.

(e) The Trustee shall not be required to exchange or register the transfer of any Notes selected, called or being called for redemption (including Notes, if any, redeemable at the option of the Holder provided such Notes are then redeemable at such Holder's option) except, in the case of any Note to be redeemed in part, the portion thereof not to be so redeemed.

(f) If the principal amount, and applicable premium, of part, but not all of a Global Note is paid, then upon surrender to the Trustee of such Global Note, the Company shall execute, and the Trustee shall authenticate, deliver and register, a Global Note in an authorized denomination in aggregate principal amount equal to, and having the same terms, Original Issue Date and series as, the unpaid portion of such Global Note.

#### Section 2.07 MUTILATED, DESTROYED, LOST OR STOLEN NOTES.

(a) If any temporary or definitive Note shall become mutilated or be destroyed, lost or stolen, the Company shall execute, and upon its written request the Trustee shall authenticate and deliver, a new Note of like form and principal amount and having the same terms and Original Issue Date and bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, the Trustee and any paying agent or Authenticating Agent 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 of a Note, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

(b) The Trustee shall authenticate any such substituted Note and deliver the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Note, 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 connected therewith. If any Note which has matured, is about to mature, has been redeemed or called for redemption shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note) if the applicant for such payment shall furnish to the Company, the Trustee and any paying agent or Authenticating Agent such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and the Trustee of the destruction, loss or theft of such Note and of the ownership thereof.

(c) Every substituted Note issued pursuant to this Section 2.07 by virtue of the fact that any Note is mutilated, destroyed, lost or stolen shall constitute an additional contractual

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obligation of the Company, whether or not such destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder. All Notes shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes and shall preclude to the full extent permitted by applicable law any and all other rights or remedies with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

**Section 2.08 TEMPORARY NOTES.** Pending the preparation of definitive Notes of any series, the Company may execute and the Trustee shall authenticate and deliver temporary Notes (printed, lithographed or otherwise reproduced). Temporary Notes shall be issuable in any authorized denomination and substantially in the form of the definitive Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Notes. Without unreasonable delay the Company shall execute and shall deliver to the Trustee definitive Notes of such series and thereupon any or all temporary Notes of such series shall be surrendered in exchange therefor at the corporate trust office of the Trustee, and the Trustee shall authenticate, deliver and register in exchange for such temporary Notes an equal aggregate principal amount of definitive Notes of such series. Such exchange shall be made by the Company at its own expense and without any charge therefor to the Noteholders. Until so exchanged, the temporary Notes of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Notes of such series authenticated and delivered hereunder.

**Section 2.09 CANCELLATION OF NOTES PAID, ETC.** All Notes surrendered for the purpose of payment, redemption, exchange or registration of transfer shall be surrendered to the Trustee for cancellation and promptly cancelled by it and no Notes shall be issued in lieu thereof except as expressly permitted by this Indenture. The Company shall surrender to the Trustee any Notes so acquired by it and such Notes shall be cancelled by the Trustee. No Notes shall be authenticated in lieu of or in exchange for any Notes so cancelled.

**Section 2.10 INTEREST RIGHTS PRESERVED.** Each Note delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Note shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note, and each such Note shall be so dated that neither gain nor loss of interest shall result from such transfer, exchange or substitution.

**Section 2.11 SPECIAL RECORD DATE.** If and to the extent that the Company fails to make timely payment or provision for timely payment of interest on any series of Notes (other than on an Interest Payment Date that is a Maturity date), that interest shall cease to be payable to the Persons who were the Noteholders of such series at the applicable Regular Record Date. In that event, when moneys become available for payment of the interest, the Trustee shall (a) establish a date of payment of such interest and a Special Record Date for the payment of that interest, which Special Record Date shall be not more than 15 or fewer than 10 days prior to the date of the proposed payment and (b) mail notice of the date of payment and of the Special Record Date not fewer than 10 days preceding the Special Record Date to each Noteholder of such series at the close of business on the 15th day preceding the mailing at the address of such Noteholder, as it appeared on the register for the Notes. On the day so established by the Trustee, the interest shall

be payable to the Holders of the applicable Notes at the close of business on the Special Record Date.

Section 2.12 PAYMENT OF NOTES. Payment of the principal of and interest and premium on all Notes shall be payable as follows:

(a) On or before 10:00 a.m., New York City time, or such other time as shall be agreed upon between the Trustee and the Company, of the day on which payment of principal, interest and premium is due on any Global Note pursuant to the terms thereof, the Company shall deliver to the Trustee or the paying agent funds available on such date sufficient to make such payment, by wire transfer of immediately available funds or by instructing the Trustee to withdraw sufficient funds from an account maintained by the Company with the Trustee or such other method as is acceptable to the Trustee. On or before 1:30 p.m., New York City time, or such other time as shall be agreed upon between the Trustee and the Depository, of the day on which any payment of interest is due on any Global Note (other than at Maturity), the Trustee shall pay to the Depository such interest in same day funds. On or before 1:30 p.m., New York City time or such other time as shall be agreed upon between the Trustee and the Depository, of the day on which principal, interest payable at Maturity and premium, if any, is due on any Global Note, the Trustee shall deposit with the Depository the amount equal to the principal, interest payable at Maturity and premium, if any, by wire transfer into the account specified by the Depository. As a condition to the payment, at Maturity, of any part of the principal of, interest on, and applicable premium of any Global Note, the Depository shall surrender, or cause to be surrendered, such Global Note to the Trustee, whereupon a new Global Note shall be issued to the Depository pursuant to Section 2.06(f) hereof.

(b) With respect to any Note that is not a Global Note, principal, applicable premium and interest due at the Maturity of the Note shall be payable in immediately available funds when due upon presentation and surrender of such Note at the corporate trust office of the Trustee or at the authorized office of any paying agent in the Borough of Manhattan, The City and State of New York. Interest on any Note that is not a Global Note (other than interest payable at Maturity) shall be paid by check payable in clearinghouse funds mailed to the Holder thereof at such Holder's address as it appears on the register; provided that if the Trustee receives a written request from any Holder of Notes, the aggregate principal amount of which having the same Interest Payment Date equals or exceeds \$10,000,000, on or before the applicable Regular Record Date for such Interest Payment Date, interest on such Note shall be paid by wire transfer of immediately available funds to a bank within the continental United States designated by such Holder in its request or by direct deposit into the account of such Holder designated by such Holder in its request if such account is maintained with the Trustee or any paying agent.

Section 2.13 NOTES ISSUABLE IN THE FORM OF A GLOBAL NOTE.

(a) If the Company shall establish pursuant to Section 2.05 hereof that the Notes of a particular series are to be issued in the form of one or more Global Notes, then the Company shall execute and the Trustee shall, in accordance with Section 2.05 hereof and the Company Order delivered to the Trustee thereunder, authenticate and deliver such Global Note or Notes, which, unless otherwise specified in such Company Order, (i) shall represent, shall be denominated in an amount equal to the aggregate principal amount of, and shall have the same terms as, the outstanding Notes of such series to be represented by such Global Note or Notes, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "This Note is a Global Note registered in the name of the

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Depository (referred to herein) or a nominee thereof and, unless and until it is exchanged in whole for the individual Notes represented hereby as provided in the Indenture referred to below, this Global Note may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. Unless this Global Note is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful since the registered owner hereof, Cede & Co., has an interest herein" or such other legend as may be required by the rules and regulations of the Depository.

(b) (i) If at any time the Depository for a Global Note notifies the Company that it is unwilling or unable to continue as Depository for such Global Note or if at any time the Depository for the Global Note shall no longer be eligible or in good standing under the Securities Exchange Act of 1934 or other applicable statute or regulation, the Company shall appoint a successor Depository with respect to such Global Note. If a successor Depository for such Global Note is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 2.05(c)(vi) hereof shall no longer be effective with respect to the series of Notes evidenced by such Global Note and the Company shall execute, and the Trustee, upon receipt of a Company Order

for the authentication and delivery of individual Notes of such series in exchange for such Global Note, shall authenticate and deliver, individual Notes of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Note in exchange for such Global Note. The Trustee shall not be charged with knowledge or notice of the ineligibility of a Depository unless a Responsible Officer shall have actual knowledge thereof.

(ii) (A) The Company may at any time and in its sole discretion determine that all outstanding (but not less than all) Notes of a series issued or issuable in the form of one or more Global Notes shall no longer be represented by such Global Note or Notes. In such event the Company shall execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of individual Notes in exchange for such Global Note, shall authenticate and deliver individual Notes of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Note or Notes in exchange for such Global Note or Notes.

(B) Within seven days after the occurrence of an Event of Default with respect to any series of Global Notes, the Company shall execute, and the Trustee shall authenticate and deliver, Notes of such series in definitive registered form in any authorized denominations and in aggregate principal amount equal to the principal amount of such Global Notes in exchange for such Global Notes.

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(iii) In any exchange provided for in any of the preceding two paragraphs, the Company will execute and the Trustee will authenticate and deliver individual Notes in definitive registered form in authorized denominations. Upon the exchange of a Global Note for individual Notes, such Global Note shall be cancelled by the Trustee. Notes issued in exchange for a Global Note pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Global Note, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Notes to the Depository for delivery to the persons in whose names such Notes are so registered, or if the Depository shall refuse or be unable to deliver such Notes, the Trustee shall deliver such Notes to the persons in whose names such Notes are registered, unless otherwise agreed upon between the Trustee and the Company, in which event the Company shall cause the Notes to be delivered to the persons in whose names such Notes are registered.

(c) Neither the Company, the Trustee, any Authenticating Agent nor any paying agent shall have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interest.

(d) Pursuant to the provisions of this subsection, at the option of the Trustee (subject to Section 2.04(a) hereof) and upon 30 days' written notice to the Depository but not prior to the first Interest Payment Date of the respective Global Notes, the Depository shall be required to surrender any two or more Global Notes which have identical terms, including, without limitation, identical maturities, interest rates and redemption provisions (but which may have differing Original Issue Dates) to the Trustee, and the Company shall execute and the Trustee shall authenticate and deliver to, or at the direction of, the Depository a Global Note in principal amount equal to the aggregate principal amount of, and with all terms identical to, the Global Notes surrendered thereto and that shall indicate each applicable Original Issue Date and the principal amount applicable to each such Original Issue Date. The exchange contemplated in this subsection shall be consummated at least 30 days prior to any Interest Payment Date applicable to any of the Global Notes surrendered to the Trustee. Upon any exchange of any Global Note with two or more Original Issue Dates, whether pursuant to this Section or pursuant to Section 2.06 or Section 3.03 hereof, the aggregate principal amount of the Notes with a particular Original Issue Date shall be the same before and after such exchange, after giving effect to any retirement of Notes and the Original Issue Dates applicable to such Notes occurring in connection with such exchange.

Section 2.14 CUSIP AND ISIN NUMBERS. The Company in issuing Notes may use "CUSIP" or "ISIN" numbers (if then generally in use) and, if so used, the Trustee shall use "CUSIP" or "ISIN" numbers in notices of redemption as a convenience to holders of Notes; provided, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the "CUSIP" or "ISIN" numbers.

Section 2.15 EXTENSION OF INTEREST PAYMENT PERIODS. The Company shall have the right at any time, so long as the Company is not in default in the payment of interest on the

Notes of any series hereunder, to extend interest payment periods on all Notes of one or more series, if so specified as contemplated by Section 2.05 with respect to such Notes and upon such terms as may be specified as contemplated by Section 2.05 with respect to such Notes.

### ARTICLE III

#### REDEMPTION OF NOTES

Section 3.01 APPLICABILITY OF ARTICLE. Those Notes of any series that are, by their terms, redeemable prior to their Stated Maturity at the option of the Company, may be redeemed by the Company at such times, in such amounts and at such prices as may be specified therein and in accordance with the provisions of this Article III.

Section 3.02 NOTICE OF REDEMPTION; SELECTION OF NOTES.

(a) The election of the Company to redeem any Notes shall be evidenced by a Board Resolution which shall be given with notice of redemption to the Trustee at least 45 days (or such shorter period acceptable to the Trustee in its sole discretion) prior to the redemption date specified in such notice.

(b) Notice of redemption to each Holder of Notes to be redeemed as a whole or in part shall be given by the Trustee, in the manner provided in Section 15.10 hereof, no less than 30 or more than 60 days prior to the date fixed for redemption. Any notice which is given in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Noteholder receives the notice. In any case, failure duly to give such notice, or any defect in such notice, to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each such notice shall identify the Notes to be redeemed (including "CUSIP" or "ISIN" numbers) and shall specify the date fixed for redemption, the places of redemption and the redemption price (or the method for calculation thereof) at which such Notes are to be redeemed, and shall state that (subject to subsection (e) of this section) payment of the redemption price of such Notes or portion thereof to be redeemed will be made upon surrender of such Notes at such places of redemption, that interest accrued to the date fixed for redemption will be paid as specified in such notice, and that from and after such date interest thereon shall cease to accrue. If less than all of a series of Notes having the same terms are to be redeemed, the notice shall specify the Notes or portions thereof to be redeemed. If any Note is to be redeemed in part only, the notice which relates to such Note shall state the portion of the principal amount thereof to be redeemed, and shall state that, upon surrender of such Note, a new Note or Notes having the same terms in aggregate principal amount equal to the unredeemed portion thereof will be issued.

(d) Unless otherwise provided by a Company Order under Section 2.05 hereof, if less than all of a series of Notes is to be redeemed, the Trustee shall select in such manner as it shall deem appropriate and fair in its discretion the particular Notes to be redeemed in whole or in part and shall hereafter promptly notify the Company in writing of the Notes so to be redeemed. If less than all of a series of Notes represented by a Global Note is to be redeemed, the particular Notes or portions thereof of such series to be redeemed shall be selected by the Depositary for such series of Notes in such manner as the Depositary shall determine. Notes shall be redeemed only in denominations of \$1,000, or such other denominations authorized by a Company Order pursuant to Section 2.05 hereof, provided that any remaining principal amount of a Note redeemed in part shall be a denomination authorized under this Indenture.

(e) If at the time of the mailing of any notice of redemption at the option of the Company, the Company shall not have irrevocably directed the Trustee to apply funds then on deposit with the Trustee or held by it and available to be used for the redemption of Notes to redeem all the Notes called for redemption, such notice, at the election of the Company, may state that it is conditional and subject to the receipt of the redemption moneys by the Trustee on or before the date fixed for redemption and that such notice shall be of no force and effect unless such moneys are so received on or before such date.

Section 3.03 PAYMENT OF NOTES ON REDEMPTION; DEPOSIT OF REDEMPTION PRICE.

(a) If notice of redemption for any Notes shall have been given as provided in Section 3.02 hereof and such notice shall not contain the language permitted at the Company's option under Section 3.02(e) hereof, such Notes or portions of Notes called for redemption shall become due and payable on the date and at the places stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption of such Notes. Interest on the Notes or portions thereof so called for redemption shall cease to accrue and such Notes or portions thereof shall be deemed not to be entitled to any benefit under this Indenture except to receive payment of the redemption price together with interest accrued thereon to the date fixed for redemption. Upon presentation and surrender of such Notes at the place of payment specified in such notice, such Notes or the specified portions thereof shall be paid and redeemed at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption.

(b) If notice of redemption shall have been given as provided in Section 3.02 hereof and such notice shall contain the language permitted at the Company's option under Section 3.02(e) hereof, such Notes or portions of Notes called for redemption shall become due and payable on the date and at the places stated in such notice at the applicable

redemption price, together with interest accrued to the date fixed for redemption of such Notes, and interest on the Notes or portions thereof so called for redemption shall cease to accrue and such Notes or portions thereof shall be deemed not to be entitled to any benefit under this Indenture except to receive payment of the redemption price together with interest accrued thereon to the date fixed for redemption; provided that, in each case, the Company shall have deposited with the Trustee or a paying agent on or prior to 11:00 a.m. New York City time on such redemption date an amount sufficient to pay the redemption price together with interest accrued to the date fixed for redemption. Upon the Company making such deposit and, upon presentation and surrender of such Notes at such a place of payment in such notice specified, such Notes or the specified portions thereof shall be paid and redeemed at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption. If the Company shall not make such deposit on or prior to the redemption date, the notice of redemption shall be of no force and effect and the principal on such Notes or specified portions thereof shall continue to bear interest as if the notice of redemption had not been given.

(c) No notice of redemption of Notes shall be mailed during the continuance of any Event of Default, except (1) that, when notice of redemption of any Notes has been mailed, the Company shall redeem such Notes but only if funds sufficient for that purpose have prior to the occurrence of such Event of Default been deposited with the Trustee or a paying agent for such purpose, and (2) that notices of redemption of all outstanding Notes may be given during the continuance of an Event of Default.

(d) Upon surrender of any Note redeemed in part only, the Company shall execute, and the Trustee shall authenticate, deliver and register, a new Note or Notes of authorized denominations in aggregate principal amount equal to, and having the same terms, Original Issue Date or Dates and series as, the unredeemed portion of the Note so surrendered.

## **ARTICLE IV**

### **SINKING FUNDS**

Section 4.01 APPLICABILITY OF ARTICLE. The provisions of this Article shall be applicable to any sinking fund for the retirement of the Notes of any series, except as otherwise specified as contemplated by Section 2.05(c) hereof for Notes of such series.

The minimum amount of any sinking fund payment provided for by the terms of Notes of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Notes of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Notes of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 4.02 hereof. Each sinking fund payment shall be applied to the redemption of Notes of the series in respect of which it was made as provided for by the terms of such Notes.

Section 4.02 SATISFACTION OF SINKING FUND PAYMENTS WITH NOTES. The Company (a) may deliver Outstanding Notes (other than any previously called for redemption) of a series in respect of which a mandatory sinking fund payment is to be made and (b) may apply as a credit Notes of such series which have been redeemed either at the election of the Company pursuant to the terms of such Notes or through the application of permitted optional sinking fund payments pursuant to the terms of such Notes, in each case in satisfaction of all or any part of such mandatory sinking fund payment; provided, however, that no Notes shall be applied in satisfaction of a mandatory sinking fund payment if such Notes shall have been previously so applied. Notes so applied shall be received and credited for such purpose by the Trustee at the redemption price specified in such Notes for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

Section 4.03 REDEMPTION OF NOTES FOR SINKING FUND. Not less than 45 days prior to each sinking fund payment date for the Notes of any series, the Company shall deliver to the Trustee an Officers' Certificate specifying:

- (a) the amount of the next succeeding mandatory sinking fund payment for such series;
- (b) the amount, if any, of the optional sinking fund payment to be made together with such mandatory sinking fund payment;
- (c) the aggregate sinking fund payment;
- (d) the portion, if any, of such aggregate sinking fund payment which is to be satisfied by the payment of cash; and
- (e) the portion, if any, of such aggregate sinking fund payment which is to be satisfied by delivering and crediting Notes of such series pursuant to Section 4.02 hereof and stating the basis for such credit and that such Notes have not previously been so credited.

The Company shall also deliver to the Trustee any Notes to be so delivered. If the Company shall not deliver such Officers' Certificate, the next succeeding sinking fund payment for such series shall be made entirely in cash in the



amount of the mandatory sinking fund payment. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Notes to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02(d) hereof and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02 hereof. Such notice having been duly given, the redemption of such Notes shall be made upon the terms and in the manner stated in Section 3.03 hereof.

## ARTICLE V

### SATISFACTION AND DISCHARGE; UNCLAIMED MONEYS

Section 5.01 SATISFACTION AND DISCHARGE OF INDENTURE. This Indenture shall upon the request of the Company cease to be of further effect with respect to the Notes of any series (except as to any surviving rights of registration of transfer or exchange of Notes of such series herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when:

(a) either:

(i) all Notes of such series previously authenticated and delivered (other than Notes of such series which have been destroyed, lost or stolen and which have been replaced or paid) have been delivered to the Trustee for cancellation; or

(ii) all the Notes of such series not previously delivered to the Trustee for cancellation have become due and payable (whether at stated maturity, early redemption or otherwise), and the Company has deposited, or caused to be deposited, irrevocably with the Trustee as funds in trust solely for the benefit of the Holders of the Notes of such series an amount in cash sufficient to pay principal of, premium, if any, and interest on all outstanding Notes of such series;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company with respect to the Notes of such series; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to the Notes of such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to the Notes of any or all series, the obligations of the Company to the Trustee under Section 9.06 hereof shall survive, and, if money will have been deposited with the Trustee pursuant to subclause (ii) of clause (a) of this Section 5.01, the obligations of the Trustee under Sections 5.02 and 5.05 hereof shall survive.

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### Section 5.02 APPLICATION OF TRUST FUNDS; INDEMNIFICATION.

(a) Subject to the provisions of Section 5.05 hereof, all money and U.S. Government Obligations deposited with the Trustee pursuant to Section 5.01, 5.03 or 5.04 hereof and all money received by the Trustee in respect of U.S. Government Obligations deposited with the Trustee pursuant to Sections 5.01, 5.03 or 5.04 hereof, shall be held in trust and applied by it, in accordance with the provisions of the Notes of any particular series and this Indenture, to the payment, either directly or through any paying agent as the Trustee may determine, to the persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with or received by the Trustee.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations deposited pursuant to Sections 5.01, 5.03 or 5.04 hereof or the interest, premium, if any, and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon the request of the Company any U.S. Government Obligations or money held by it as provided in Sections 5.01, 5.03 or 5.04 hereof which, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such U.S. Government Obligations or money were deposited or received. This provision shall not authorize the sale by the Trustee of any U.S. Government Obligations held under this Indenture.

Section 5.03 LEGAL DEFEASANCE. The Company shall be deemed to have been discharged from its obligations with respect to all of the outstanding Notes of any series on the day after the date of the deposit referred to in subparagraph (i) hereof, and the provisions of this Indenture, as it relates to the outstanding Notes of such series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, upon the request of the Company, execute proper instruments acknowledging the same), except as to:

(a) the rights of Holders of the Notes of such series to receive, solely from the trust funds described in subparagraph (i) below, payments of the principal of, premium, if any, or interest on the outstanding Notes of such series on the date such payments are due;

(b) the Company's obligations with respect to the Notes of such series under Sections 2.06, 2.07, 2.13, 6.02 and 6.04 hereof; and

(c) the rights, powers, trust and immunities of the Trustee hereunder and the duties of the Trustee under Section 5.02 hereof and the duty of the Trustee to authenticate Notes of such series issued on registration of transfer of exchange; provided that the following conditions shall have been satisfied:

(i) the Company shall have deposited, or caused to be deposited, irrevocably with the Trustee as funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of the Notes of such series, cash in U.S. dollars and/or U.S. Government Obligations which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (without reinvestment), not later than one day before the due date of any payment of money, an amount in

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cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal of, premium, if any, and interest on all the Notes of such series on the dates such payments of principal, premium, if any, or interest are due to maturity or redemption;

(ii) no Event of Default or event which with the giving of notice or lapse of time or both would become an Event of Default with respect to the Notes of such series shall have occurred and be continuing on the date of such deposit and 91 days shall have passed after the deposit has been made, and, during such 91 day period, no Default with respect to the Notes of such series specified in Section 8.01(a)(5) or (6) hereof with respect to the Company occurs which is continuing at the end of such period;

(iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of execution of this Indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Notes of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to federal income tax in the same amounts, in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

(iv) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Notes of such series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(v) such deposit shall not cause the Trustee to have a conflicting interest within the meaning of the TIA with respect to any securities of the Company or result in the trust arising from such deposit constituting an "investment company" (as defined in the Investment Company Act of 1940, as amended); and

(vi) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the defeasance contemplated by this Section 5.03 have been complied with.

Subject to compliance with this Article V, the Company may exercise its option under this Section 5.03 notwithstanding the prior exercise of its option under Section 5.04 with respect to the Notes of any series. Following a defeasance, payment of the Notes of such series may not be accelerated because of an Event of Default.

**Section 5.04 COVENANT DEFEASANCE.** On and after the day after the date of the deposit referred to in subparagraph (a) hereof, the Company may omit to comply with any term, provision or condition set forth under Sections 6.05, 6.07, 6.08 and Article XII hereof as well as any additional covenants contained in a supplemental indenture hereto (and the failure to comply with any such provisions shall not constitute a Default or Event of Default under Section 8.01 hereof) and the occurrence of any event described in clause (3) and (4) of Section 8.01(a) hereof

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shall not constitute a default or Event of Default hereunder, with respect to the Notes of any series, provided that the following conditions shall have been satisfied:

(a) with reference to this Section 5.04, the Company has deposited, or caused to be deposited, irrevocably (except as provided in Section 5.05 hereof) with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Notes of such series, cash in U.S. dollars and/or U.S. Government Obligations which through the payment of principal and interest in respect thereof, in accordance with their terms, will provide (without reinvestment), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal, premium, if any, and interest on all the Notes of such series on the dates such payments of principal, premium, if any, and interest are due to maturity or redemption;

(b) no Event of Default or event which with the giving of notice or lapse of time or both would become an Event of Default with respect to the Notes of such series shall have occurred and be continuing on the date of such deposit and 91 days shall have passed after the deposit has been made, and, during such 91 day period, no Default with respect to the Notes of such series specified in Section 8.01(a)(5) or (6) hereof with respect to the Company occurs which is continuing at the end of such period;

(c) the Company shall have delivered to the Trustee an Opinion of Counsel confirming that Holders of the Notes of such series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and defeasance and will be subject to federal income tax in the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(d) the Company shall have delivered to the Trustee an Officers' Certificate stating the deposit was not made by the Company with the intent of preferring the Holders of the Notes of such series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(e) such deposit shall not cause the Trustee to have a conflicting interest within the meaning of the TIA with respect to any securities of the Company or result in the trust arising from such deposit constituting an "investment company" (as defined in the Investment Company Act of 1940, as amended);

(f) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated by this Section 5.04 have been complied with; and

(g) following a covenant defeasance, payment of the Notes of any series may not be accelerated because of an Event of Default specified in Sections 8.01(a)(5) and (6) or by reference to Sections 6.05, 6.07, 6.08 and 8.01(a)(3) and (4) and Article XII hereof.

Section 5.05 REPAYMENT TO COMPANY. The Trustee and the paying agent shall pay to the Company upon request any money held by them for the payment of principal, premium, if any, or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders of the Notes of such series entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person.

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## ARTICLE VI

### PARTICULAR COVENANTS OF THE COMPANY

Section 6.01 PAYMENT OF PRINCIPAL AND INTEREST. The Company covenants and

agrees for the benefit of the Holders of the Notes of any series that it will duly and punctually pay or cause to be paid the principal of and any premium and interest, if any, on, such Notes at the places, at the respective times and in the manner provided in such Notes or in this Indenture.

Section 6.02 OFFICES FOR PAYMENTS, ETC. So long as the Notes of any series are outstanding hereunder, the Company will maintain an office or agency where the Notes of such series may be presented for payment, for exchange as in this Indenture provided, for registration of transfer as in this Indenture provided, and where notices and demands to or upon the Company in respect of the securities under this Indenture may be served. The Principal Executive Offices of the Company will be such office or agency unless the Company shall maintain some other office or agency for such purposes and shall give the Trustee and the registered holders of the securities written notice of the location thereof. If the Company shall fail to give such notice of the location or of any change in the location of any of the above offices or agencies, presentations and demands may be made and notices may be served at the Corporate Trust Office of the Trustee, and, in such event, the Trustee shall act as the Company's agent to receive all such presentations, surrenders, notices and demands.

The Company may from time to time designate one or more additional offices or agencies where the Notes of any series may be presented for payment, for exchange as in this Indenture provided and for registration of transfer as in this Indenture provided, and the Company may from time to time rescind any such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain any office or

agency provided for in this Section. The Company will give to the Trustee prompt written notice of any such designation or rescission thereof and of any change in the location of any such other office or agency.

Section 6.03 APPOINTMENT TO FILL A VACANCY IN OFFICE OF TRUSTEE. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 9.11, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 6.04 PROVISION AS TO PAYING AGENT. The Trustee shall be the paying agent for the Notes and, at the option of the Company, the Company may appoint additional paying agents (including without limitation itself or its Subsidiary unless an Event of Default has occurred and is continuing). Whenever the Company shall appoint a paying agent other than the Trustee with respect to the Notes, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(a) that such paying agent will hold all sums received by it as such agent for the payment of the principal of or interest, if any, on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the Holders of the Notes, or of the Trustee until such sums shall be paid to such Holders or otherwise disposed of as herein provided;

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(b) that such paying agent will give the Trustee notice of any failure by the Company (or by any other obligor on Notes) to make any payment of the principal of, premium if any, or interest on the Notes when the same shall be due and payable; and

(c) that such paying agent will at any time during the continuance of any such failure, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent.

The Company will, on or prior to each due date of the principal of and any premium, if any, or interest on the Notes, deposit with the paying agent a sum sufficient to pay such principal and any premium or interest so becoming due, such sum to be held in trust for the benefit of the Holders of the Notes entitled to such principal of and any premium or interest, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action.

If the Company or its Subsidiary shall act as its own paying agent with respect to the Notes, it will, on or before each due date of the principal of (and premium, if any) or interest, if any, on the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes, a sum sufficient to pay such principal (and premium, if any) or interest, if any, so becoming due until such sums shall be paid to such Holders or otherwise disposed of as herein provided. The Company will promptly notify the Trustee of any failure to take such action.

The Company may at any time pay or cause to be paid to the Trustee all sums held in trust by it or any paying agent hereunder, as required by this Section, such sums to be held by the Trustee upon the trusts herein contained, 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.

Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to the provisions of Sections 5.03 and 5.04.

Section 6.05 CORPORATE EXISTENCE. Subject to the rights of the Company under Article XII, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory) and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right or franchise if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 6.06 CERTIFICATES AND NOTICE TO TRUSTEE. The Company shall, on or before June 30 of each year, commencing 2004 deliver to the Trustee a certificate from its principal executive officer, principal financial officer or principal accounting officer covering the preceding calendar year and stating whether or not, to the knowledge of such Person, the Company has complied with all conditions and covenants under this Indenture, and, if not, describing in reasonable detail any failure by the Company to comply with any such conditions or covenants. For purposes of this Section, compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

Section 6.07. LIMITATION ON DIVIDENDS; TRANSACTIONS WITH AFFILIATES.

The Company covenants, for the benefit of the Holders of each series of Notes, that, subject to the next succeeding sentence, (a) the Company shall not declare or pay any dividend or make any distributions with respect to, or redeem, purchase, acquire or make a

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liquidation payment with respect to, any of its capital stock, and (b) the Company shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities (including guarantees)

issued by the Company which rank *pari passu* with or junior to the Notes, (a) if at such time the Company shall have given notice of its election to extend an interest payment period for such series of Notes and such extension shall be continuing, (b) if at such time the Company shall be in default with respect to its payment or other obligations under the Guarantee with respect to the series of Trust Securities, if any, related to such series of Notes, or (c) if at such time an Event of Default hereunder with respect to such series of Notes shall have occurred and be continuing. The preceding sentence, however, shall not restrict (i) any of the actions described in the preceding sentence resulting from any reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock, (ii) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, or (iii) purchases or acquisitions of shares of the Company's common stock in connection with any employee benefit plans, any employee contract or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants or in connection with a dividend reinvestment or shareholder stock purchase plan.

Section 6.08. COVENANTS AS TO TRUST. In the event Notes are issued and sold to a Securities Trust in connection with the issuance of Trust Securities by such Securities Trust, for so long as such Trust Securities remain outstanding, the Company will (i) maintain 100% direct or indirect ownership of the Common Securities (as defined in the Trust Agreement) of such Securities Trust; *provided, however*, that any permitted successor of the Company under this Indenture may succeed to the Company's ownership of such Common Securities, (ii) not cause, as sponsor of such Securities Trust, or permit, as holder of the Common Securities of such Securities Trust, the dissolution, winding-up or termination of such Securities Trust, except in connection with a distribution of Notes as provided in the Trust Agreement and in connection with certain mergers, consolidations or amalgamations permitted by the Trust Agreement and (iii) use its reasonable efforts to cause such Securities Trust (a) to remain a business trust, except in connection with a distribution of Notes, the redemption of all of the Trust Securities of such Securities Trust or certain mergers, consolidations or amalgamations, each as permitted by the Trust Agreement of such Securities Trust, and (b) to otherwise continue to be classified for United States federal income tax purposes as a grantor trust.

## ARTICLE VII

### NOTEHOLDER LISTS AND REPORTS BY

#### THE COMPANY AND THE TRUSTEE

Section 7.01 COMPANY TO FURNISH NOTEHOLDER LISTS. The Company and any other obligor on the Notes shall furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Notes:

(a) semi-annually and not more than 15 days after each Regular Record Date for each Interest Payment Date that is not a Maturity date, as of such Regular Record Date, and such list need not include information received after such date; and

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

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provided that if and so long as the Trustee shall be the registrar for the Notes, such list shall not be required to be furnished.

Section 7.02 PRESERVATION AND DISCLOSURE OF NOTEHOLDER LISTS.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of the Notes (i) contained in the most recent lists furnished to it as provided in Section 7.01, (ii) received by it in the capacity of registrar for the Notes, if so acting, and (iii) filed with it within the two preceding years pursuant to Section 7.04(d)(2). The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

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

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

(ii) inform such applicants as to the approximate number of Holders whose names and addresses appear in the information preserved at the time by the Trustee, in accordance with the

provisions of such subsection (a) and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford to such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder of Notes, whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of such subsection (a) a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met, and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every Holder of a Note, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of the

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Company or the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Notes in accordance with the provisions of subsection (b) of this Section, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under such subsection (b).

Section 7.03 REPORTS BY THE COMPANY. The Company shall:

(a) 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) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(b) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations. Filing of such information, documents and reports with the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates); and

(c) transmit by mail to all Holders of Notes, within 30 days after the filing thereof with the Trustee in the manner and to the extent provided in Section 7.04(d), such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Note that, for purposes of this Section 7.03, the Company's responsibility to file information with the Trustee which is also filed with the Commission, shall be deemed to be satisfied by the posting of the Company's filings with the Commission on the Commission's website ([www.sec.gov/edgar](http://www.sec.gov/edgar)).

Section 7.04 REPORTS BY THE TRUSTEE.

(a) Annually, not later than August 15 of each year, the Trustee shall transmit by mail a brief report dated as of such date that complies with Section 313(a) of the TIA (to the extent required by such Section).

(b) The Trustee shall from time to time transmit by mail brief reports that comply, both in content and date of delivery, with Section 313(b) of the TIA (to the extent required by such Section).

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(c) A copy of each such report filed pursuant to this section shall, at the time of such transmission to such Holders, be filed by the Trustee with each stock exchange upon which any Notes are listed and also with the Commission. The

Company will notify the Trustee promptly in writing upon the listing of such Notes on any stock exchange or any delisting thereof.

(d) Except as otherwise described in Section 7.03, reports pursuant to this Section shall be transmitted:

(1) by mail to all Holders of Notes, as their names and addresses appear in the register for the Notes;

(2) by mail to such Holders of Notes as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for such purpose;

(3) by mail, except in the case of reports pursuant to Section 7.04(b) and (c) hereof, to all Holders of Notes whose names and addresses have been furnished to or received by the Trustee pursuant to Section 7.0 and 7.02(a)(ii) hereof; and

(4) at the time such report is transmitted to the Holders of the Notes, to each exchange on which Notes are listed and also with the Commission.

## ARTICLE VIII

### REMEDIES OF THE TRUSTEE AND NOTEHOLDERS

#### ON EVENTS OF DEFAULT

##### Section 8.01 EVENTS OF DEFAULT.

(a) If one or more of the following Events of Default with respect to the Notes of any series shall have occurred and be continuing:

(1) default in the payment of any installment of interest upon any Note of such series as and when the same shall become due and payable, and continuance of such default for a period of thirty (30) days, provided, however, that (i) a valid extension of the interest payment period or deferral of interest payment by the Company as contemplated in Section 2.15 shall not constitute a failure to pay interest for this purpose; and (ii) no such default shall be deemed to exist if, on or prior to the date on which such interest became due, the Company shall have made a payment sufficient to pay such interest pursuant to the Guarantee related to the Trust Securities of the Securities Trust owning such series of Notes, and shall have delivered a notice to the Trustee to that effect;

(2) default in the payment of the principal of or any premium on any Note of such series as and when the same shall become due and payable, and continuance of such default for a period of one (1) day;

(3) failure on the part of the Company duly to observe or perform any other covenants or agreements on the part of the Company contained in this Indenture (other than a covenant or agreement that has been expressly included in this Indenture solely for the benefit of one or more series of Notes other than such

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series) for a period of sixty (60) days after the date on which written notice specifying such failure, stating that such notice is a "Notice of Default" hereunder and demanding that the Company remedy the same, shall have been given to the Company by the Trustee by registered mail, or to the Company and the Trustee by the Holders of not less than 33% in aggregate principal amount of the Notes of such series at the time outstanding;

(4) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable law, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or ordering the winding up or liquidation of the affairs of the Company, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days;

(5) the Company shall commence a voluntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect or any other case or proceeding to be adjudicated a bankrupt or insolvent, or consent to the entry of a decree or order for relief in an involuntary case under any such law, or to the commencement of any

bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable law, or consent to the filing of such petition or to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for any substantial part of the property of the Company, or make any general assignment for the benefit of creditors, or the notice by it in writing of its inability to pay its debts generally as they become due, or the taking of any corporate action by the Company in furtherance of any such action; or

(6) any other Event of Default specified with respect to Notes of any series pursuant to Section 2.05 hereof;

then, unless the principal of and interest on all of the Notes shall have already become due and payable, either the Trustee or the Holders of a majority in aggregate principal amount of the Notes of such series then outstanding, by notice in writing to the Company (and to the Trustee if given by such Holders), may declare the principal of and interest on all the Notes of such series to be due and payable immediately and upon any such declaration the same shall become immediately due and payable, anything in this Indenture or in the Notes of such series contained to the contrary notwithstanding; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Notes, the Trustee or the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, may make such declaration of acceleration, and not the Holders of the Notes of any one of such series.

The foregoing paragraph, however, is subject to the condition that if, at any time after the principal of and interest on the Notes of any series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum

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sufficient to pay all matured installments of interest upon all of the Notes of such series and the principal of and any premium on any and all Notes of such series which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent that payment of such interest is enforceable under applicable law, and on such principal and applicable premium at the rate borne by the Notes of such series to the date of such payment or deposit) and all sums paid or advanced by the Trustee hereunder, the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.06 hereof, and any and all Events of Default, other than the non-payment of principal of and accrued interest on any Notes which shall have become due solely by acceleration of maturity, shall have been cured or waived, then and in every such case such payment or deposit shall cause an automatic waiver of the Event of Default and its consequences and shall cause an automatic rescission and annulment of the acceleration of the Notes of such series; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

## Section 8.02 COLLECTION OF INDEBTEDNESS BY TRUSTEE; TRUSTEE MAY PROVE

### DEBT.

(a) The Company covenants that if an Event of Default described in clause (a)(1) or (a)(2) of Section 8.01 hereof shall have occurred and be continuing, then, upon demand of the Trustee, the Company shall pay to the Trustee, for the benefit of the Holders of the Notes of the series with respect to which Event of Default shall have occurred and is continuing, the whole amount that then shall have so become due and payable on all such Notes for principal or interest, as the case may be, with interest upon the overdue principal and any premium and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest at the rate borne by such Notes; and, in addition thereto, such further amounts as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith. Until such demand is made by the Trustee, the Company may pay the principal of and interest on such Notes to the Holders, whether or not such Notes be overdue.

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



(c) In case there shall be pending proceedings relative to the Company or any other obligor upon the Notes under Title 11 of the United States Code or any other applicable Federal or state bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been

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appointed for or taken possession of the Company or its property or such other obligor, or in case of any other comparable judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise:

(1) to file and prove a claim or claims for the whole amount of the principal and interest owing and unpaid in respect of the Notes, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in any judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor; and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Noteholders and of the Trustee on their behalf; and any trustee, receiver, liquidator, custodian or other similar official is hereby authorized by each of the Noteholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of the payments directly to the Noteholders, to pay to Trustee such amounts due pursuant to Section 9.06 hereof.

(d) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes of any series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding except to vote for the election of a trustee in bankruptcy or similar person.

(e) All rights of action and of asserting claims under this Indenture, or under any of the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee and its agents, attorneys and counsel, shall be for the ratable benefit of the Holders of the Notes in respect of which such action was taken.

(f) In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Notes in respect to which action was taken, and it shall not be necessary to make any Holders of such Notes parties to any such proceedings.

**Section 8.03 APPLICATION OF PROCEEDS.** Any moneys collected by the Trustee with respect to any of the Notes pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid.

**FIRST:** To the payment of all amounts due to the Trustee pursuant to Section 9.06 hereof;

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**SECOND:** In case the principal of the outstanding Notes in respect of which such moneys have been collected shall not have become due and be unpaid, to the payment of interest on the Notes, in the order of the maturity of the installments of such interest, with interest (to the extent allowed by law) upon the overdue installments of interest at the rate borne by the Notes, such payments to be made ratably to the persons entitled thereto, and then to the payment to the Holders entitled thereto of the unpaid principal of and applicable premium on any of the Notes which shall have become due (other than Notes previously called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), whether at stated maturity or by redemption, in the order of their due dates, beginning with the earliest due date, and if the amount available is not sufficient to pay in full all Notes due on any particular date, then to the payment thereof ratably, according to the amounts of principal and applicable premium due on that date, to the Holders entitled thereto, without any discrimination or privilege;

**THIRD:** In case the principal of the outstanding Notes in respect of which such moneys have been collected shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Notes for principal and any premium and interest thereon, with interest on the overdue principal and any premium and (to the extent allowed by law) upon overdue installments of interest at the rate borne by the Notes; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, then to the payment of such principal and any premium and interest without preference or priority of principal and any premium over interest, or of interest over principal and any premium or of any installment of interest over any other installment of interest, or of any

Note over any other Note, ratably to the aggregate of such principal and any premium and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Company or its successors or assigns, or to whomsoever may lawfully be entitled to the same, or as a court of competent jurisdiction may determine.

#### Section 8.04 LIMITATIONS ON SUITS BY NOTEHOLDERS.

(a) No Holder of any Note of any series shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of an Event of Default with respect to such Note and of the continuance thereof, as hereinabove provided, and unless also Noteholders of a majority in aggregate principal amount of the Notes of all series then outstanding in respect of which an Event of Default has occurred and is continuing, considered as one class, shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by the taker and Holder of every Note of any series with every other taker and Holder and the Trustee, that no one or more Holders of Notes of such series shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder of Notes of such series, 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 Notes of such series. For the protection and enforcement of the provisions of this Section, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

(b) Notwithstanding any other provision in this Indenture, however, the rights of any Holder of any Note to receive payment of the principal of and any premium and interest on such Note, on or after the respective due dates expressed in such Note or on the applicable redemption date, or to institute suit for the enforcement of any such payment on or after such respective dates are absolute and unconditional, and shall not be impaired or affected without

the consent of such Holder.

Section 8.05 SUITS FOR ENFORCEMENT. In case an Event of Default has occurred, has not been waived and is continuing hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted to it under this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 8.06 POWERS AND REMEDIES CUMULATIVE; DELAY OR OMISSION NOT WAIVER OF DEFAULT. No right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Notes is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Holder of Notes 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 Event of Default or an acquiescence therein; and, subject to Section 8.04, every right and power given by this Indenture or by law to the Trustee or to the Holders of Notes may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders of Notes, as the case may be.

#### Section 8.07 DIRECTION OF PROCEEDINGS AND WAIVER OF DEFAULTS BY MAJORITY OF NOTEHOLDERS.

(a) The Holders of a majority in aggregate principal amount of the Notes of any series at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Notes, the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, shall have the right to make such direction, and not the Holders of the Notes of any one of such series; provided, further, that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture; and provided further that (subject to Section 9.01 hereof) the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees or

responsible officers shall determine that the action or proceeding so directed would involve the Trustee in personal liability. Nothing in this Indenture

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shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction or directions by Noteholders.

(b) The Holders of a majority in aggregate principal amount of the Notes of any series at the time outstanding may on behalf of all of the Holders of the Notes of such series waive any past default or Event of Default hereunder and its consequences except a default in the payment of principal of or any premium or interest on the Notes of such series. Upon any such waiver the Company, the Trustee and the Holders of the Notes of such series shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Upon such waiver, such default shall cease to exist and be deemed to have been cured and not to be continuing, and any Event of Default arising therefrom shall be deemed to have been cured and not to be continuing, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 8.08 NOTICE OF DEFAULT. The Trustee shall, within 90 days after the occurrence of a default with respect to the Notes of any series, give to all Holders of the Notes of such series, in the manner provided in Section 16.10, notice of such default actually known to a Responsible Officer of the Trustee, unless such default shall have been cured or waived before the giving of such notice, the term "default" for the purpose of this Section 8.08 being hereby defined to be any event which is or after notice or lapse of time or both would become an Event of Default; provided that, except in the case of default in the payment of the principal of or any premium or interest on any of the Notes of such series, or in the payment of any sinking or purchase fund installments, the Trustee shall be protected in withholding such notice if and so long as its board of directors or trustees, executive committee, or a trust committee of directors or trustees or responsible officers in good faith determines that the withholding of such notice is in the interests of the Holders of the Notes of such series. The Company shall deliver to the Trustee, as soon as possible and in any event within five days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Company proposes to take with respect thereto.

Section 8.09 UNDERTAKING TO PAY COSTS. All parties to this Indenture agree, and each Holder of any Note by acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but this Section 8.09 shall not apply to any suit instituted by the Trustee, or to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes of all series in respect of which such suit may be brought, considered as one class, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or any premium or interest on any Note on or after the due date expressed in such Note or the applicable redemption date.

Section 8.10 RESTORATION OF RIGHTS ON ABANDONMENT OF PROCEEDINGS. In case the Trustee or any Holder shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or to such Holder, then, and in every such case, the Company, the Trustee and the Holders shall be restored respectively to their former positions and

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rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Holders shall continue as though no such proceedings had been taken.

Section 8.11 WAIVER OF USURY, STAY OR EXTENSION LAWS. The Company covenants (to the extent that it may lawfully do so) that it will 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 performance 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 IX

### CONCERNING THE TRUSTEE

Section 9.01 DUTIES AND RESPONSIBILITIES OF TRUSTEE.

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If

an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) No provisions 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:

1. prior to the occurrence of any Event of Default and after the curing or waiving of all Events of Default which may have occurred:

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

(B) in the absence of bad faith or actual knowledge on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which 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 (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

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2. the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and
  3. 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, pursuant to this Indenture, of the Holders of a majority in aggregate principal amount of the Notes of any one or more series, as provided herein, including, but not limited to, Section 8.07 hereof 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 Notes of such series.

(c) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 9.02 RELIANCE ON DOCUMENTS, OPINIONS, ETC. Except as otherwise

provided in Section 9.01 hereof:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, note 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 an Officers' Certificate (unless other evidence in respect thereof is herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

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

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

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

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(f) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all Events of Default, 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, note or other paper or document, unless requested in writing to do so by the Holders of a majority in aggregate principal amount of the then outstanding Notes of any series; provided 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 this Indenture, the Trustee may require reasonable indemnity against such expense or liability as a condition to so proceeding;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents or attorneys; provided that the Trustee shall not be liable for the conduct or acts of any such agent or attorney that shall have been appointed in accordance herewith with due care.

(h) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities thereunder, and to each agent, custodian and other person employed to act hereunder.

(j) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

**Section 9.03 NO RESPONSIBILITY FOR RECITALS, ETC.** The recitals contained herein and in the Notes (except in the certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with this Indenture.

**Section 9.04 TRUSTEE, AUTHENTICATING AGENT, PAYING AGENT OR REGISTRAR MAY OWN NOTES.** The Trustee and any Authenticating Agent or paying agent in its individual or other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Authenticating Agent or paying agent.

**Section 9.05 MONEYS TO BE HELD IN TRUST.** Subject to Section 5.05 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder, except the Trustee may allow and credit to the Company interest on any

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money received hereunder at such rate, if any, as may be agreed upon by the Company and the Trustee from time to time as may be permitted by law.

**Section 9.06 COMPENSATION AND EXPENSES OF TRUSTEE.** The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing (which shall not be limited by any law in regard to the compensation of a trustee of an express trust), and 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 this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and agents, including any Authenticating Agents, and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from the Trustee's negligence or willful misconduct. The Company also covenants to indemnify each of the Trustee or any predecessor and their agents for, and to hold each of them harmless against, any claim, damage, loss, liability, cost or expense incurred without negligence or willful misconduct on the part of the party so indemnified and arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of each such party incurred in defending itself against any claim or liability. The obligations of the Company under this Section 9.06 to compensate the Trustee, to indemnify 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 Notes 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 any particular Notes. The provisions of this Section 9.06 shall survive termination of this Indenture and the resignation or removal of the Trustee.

**Section 9.07 OFFICERS' CERTIFICATE AS EVIDENCE.** Whenever in the administration of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to the taking, suffering or omitting of any action hereunder, such matter (unless other evidence in respect thereof is 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 Officers' 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 by it under this Indenture in reliance thereon.

Section 9.08 CONFLICTING INTEREST OF TRUSTEE. The Trustee shall be subject to and shall comply with the provisions of Section 310(b) of the TIA. Nothing in this Indenture shall be deemed to prohibit the Trustee or the Company from making any application permitted pursuant to such section.

Section 9.09 EXISTENCE AND ELIGIBILITY OF TRUSTEE. There shall at all times be a Trustee hereunder which Trustee shall at all times be a corporation organized and doing business under the laws of the United States or any State thereof or of the District of Columbia having a combined capital and surplus of at least \$50,000,000 and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by Federal or State authorities. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid authority, then for the purposes of this Section 9.09, the combined capital and surplus shall be deemed to be as set forth in its most recent report of condition so published. No obligor upon the Notes or Person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as Trustee. If at any time the Trustee shall cease to be eligible in accordance with this Section 9.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.10 hereof.

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Section 9.10 RESIGNATION OR REMOVAL OF TRUSTEE.

(a) Pursuant to the provisions of this Article, the Trustee may at any time resign and be discharged of the trusts created by this Indenture by giving written notice to the Company specifying the day upon which such resignation shall take effect, and such resignation shall take effect immediately upon the later of the appointment of a successor trustee and such day.

(b) Any Trustee may be removed at any time with respect to the Notes of any series by an instrument or concurrent instruments in writing filed with such Trustee and signed and acknowledged by the Holders of a majority in aggregate principal amount of the then outstanding Notes of such series or by their attorneys in fact duly authorized.

(c) So long as no Event of Default has occurred and is continuing, and no event has occurred and is continuing that, with the giving of notice or the lapse of time or both, would become an Event of Default, the Company may remove any Trustee upon written notice to the Holder of each Note Outstanding and the Trustee and appoint a successor Trustee meeting the requirements of Section 9.09. The Company or the successor Trustee shall give notice to the Holders, in the manner provided in Section 16.10, of such removal and appointment within 30 days of such removal and appointment.

(d) If at any time (i) the Trustee shall cease to be eligible in accordance with Section 9.09 hereof and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, (ii) the Trustee shall fail to comply with Section 9.08 hereof after written request therefor by the Company or any such Holder, or (iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Trustee may be removed forthwith by an instrument or concurrent instruments in writing filed with the Trustee and either:

(1) signed by the Chairman, the President or any Vice President of the Company and attested by the Secretary or an Assistant Secretary of the Company; or

(2) signed and acknowledged by the Holders of a majority in principal amount of outstanding Notes or by their attorneys in fact duly authorized.

(e) Any resignation or removal of the Trustee shall not become effective until acceptance of appointment by the successor Trustee as provided in Section 9.11 hereof.

Section 9.11 APPOINTMENT OF SUCCESSOR TRUSTEE.

(a) If at any time the Trustee shall resign or be removed, the Company, by a Board Resolution, shall promptly appoint a successor Trustee.

(b) The Company shall provide written notice of its appointment of a Successor Trustee to the Holder of each Note Outstanding following any such appointment.

(c) If no appointment of a successor Trustee shall be made pursuant to Section 9.11(a) hereof within 60 days after appointment shall be required, any Noteholder or the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Said

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court may thereupon after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

(d) Any Trustee appointed under this Section 9.11 as a successor Trustee shall be a bank or trust company eligible under Section 9.09 hereof and qualified under Section 9.08 hereof.

#### Section 9.12 ACCEPTANCE BY SUCCESSOR TRUSTEE.

(a) Any successor Trustee appointed as provided in Section 9.11 hereof shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of any amounts then due it pursuant to Section 9.06 hereof, execute and deliver an instrument transferring to such successor Trustee all the rights and powers of the Trustee so ceasing to act. Upon request of any such successor Trustee, the Company shall execute any and all instruments in writing in order more fully and certainly to vest in and confirm to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee to secure any amounts then due it pursuant to Section 9.06 hereof.

(b) No successor Trustee shall accept appointment as provided in this Section 9.12 unless at the time of such acceptance such successor Trustee shall be qualified under Section 9.08 hereof and eligible under Section 9.09 hereof.

(c) Upon acceptance of appointment by a successor Trustee as provided in this Section 9.12, the successor Trustee shall mail notice of its succession hereunder to all Holders of Notes as the names and addresses of such Holders appear on the registry books.

#### Section 9.13 SUCCESSION BY MERGER, ETC.

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

(b) If at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificates of the Trustee shall have; provided that the right to adopt the certificate of

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authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 9.14 LIMITATIONS ON RIGHTS OF TRUSTEE AS A CREDITOR. The Trustee shall be subject to, and shall comply with, the provisions of Section 311 of the TIA.

#### Section 9.15 AUTHENTICATING AGENT.

(a) There may be one or more Authenticating Agents appointed by the Trustee with the written consent of the Company, with power to act on its behalf and subject to the direction of the Trustee in the authentication and delivery of Notes in connection with transfers and exchanges under Sections 2.06, 2.07, 2.08, 2.13, 3.03, and 13.04 hereof, as fully to all intents and purposes as though such Authenticating Agents had been expressly authorized by those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by any Authenticating Agent pursuant to this Section 9.15 shall be deemed to be the authentication and delivery of such Notes "by the Trustee." Any such Authenticating Agent shall be a bank or trust company or other Person of the character and qualifications set forth in Section 9.09 hereof.

(b) Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section 9.15, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent or such successor corporation.

(c) Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section 9.15, the Trustee may, with the written consent of the Company, appoint a successor Authenticating Agent, and upon so doing shall give written notice of such appointment to the Company and shall mail, in the manner provided in Section 15.10, notice of such appointment to the Holders of Notes.

(d) The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services, and the Trustee shall be entitled to be reimbursed for such payments, in accordance with Section 9.06 hereof.

(e) Sections 9.02, 9.03, 9.06, 9.07 and 9.09 hereof shall be applicable to any Authenticating Agent.

Section 9.16 TRUSTEE'S APPLICATION FOR INSTRUCTIONS FROM THE COMPANY. Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in

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writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

## ARTICLE X

### CONCERNING THE NOTEHOLDERS

Section 10.01 ACTION TAKEN BY NOTEHOLDERS. Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Notes of any series may take any action, the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Noteholders in person or by agent or proxy appointed in writing, (b) by the record of such Noteholders voting in favor thereof at any meeting of Noteholders duly called and held in accordance with Article XI hereof, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders.

Section 10.02 PROOF OF EXECUTION BY NOTEHOLDERS.

(a) Subject to Sections 9.01, 9.02 and 11.05 hereof, proof of the execution of any instruments by a Noteholder or the agent or proxy for such Noteholder shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The ownership of Notes shall be proved by the register for the Notes maintained by the Trustee.

(b) The record of any Noteholders' meeting shall be proven in the manner provided in Section 11.06 hereof.

Section 10.03 PERSONS DEEMED ABSOLUTE OWNERS. Subject to Sections 2.04(f) and 10.01 hereof, the Company, the Trustee, any paying agent and any Authenticating Agent shall deem the person in whose name any Note shall be registered upon the register for the Notes to be, and shall treat such person as, the absolute owner of such Note (whether or not such Note shall be overdue) for the purpose of receiving payment of or on account of the principal and premium, if any, and interest on such Note, and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Authenticating Agent shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon any such Note to the extent of the sum or sums so paid.

Section 10.04 COMPANY-OWNED NOTES DISREGARDED. In determining whether the Holders of the requisite aggregate principal amount of outstanding Notes of any series have concurred in any direction, consent or waiver under this Indenture, Notes that are owned by the Company or any other obligor on the Notes or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Notes which a Responsible Officer of the Trustee knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith to third parties may be regarded as outstanding for the purposes of this Section 10.04 if the pledgee shall establish the pledgee's right to take action with respect to such Notes and that the pledgee is not a person directly or indirectly controlling or controlled by or under

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direct or indirect common control with the Company or any such other obligor. In the case of a dispute as to such right, the Trustee may rely upon an Opinion of Counsel and an Officers' Certificate to establish the foregoing.

**Section 10.05 REVOCATION OF CONSENTS; FUTURE HOLDERS BOUND.** Except as may be otherwise required in the case of a Global Note by the applicable rules and regulations of the Depository, at any time prior to the taking of any action by the Holders of the percentage in aggregate principal amount of the Notes of any series specified in this Indenture in connection with such action, any Holder of a Note, which has been included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at the corporate trust office of the Trustee and upon proof of ownership as provided in Section 10.02(a) hereof, revoke such action so far as it concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange, substitution or upon registration of transfer therefor, irrespective of whether or not any notation thereof is made upon such Note or such other Notes.

**Section 10.06 RECORD DATE FOR NOTEHOLDER ACTS.** If the Company shall solicit from the Noteholders any request, demand, authorization, direction, notice, consent, waiver or other act, the Company may, at its option, by Board Resolution, fix in advance a record date for the determination of Noteholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other act, 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 act may be given before or after the record date, but only the Noteholders of record at the close of business on the record date shall be deemed to be Noteholders for the purpose of determining whether Holders of the requisite aggregate principal amount of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other act, and for that purpose the outstanding Notes shall be computed as of the record date; provided that no such request, demand, authorization, direction, notice, consent, waiver or other act by the Noteholders on the record date shall be deemed effective unless it shall become effective pursuant to this Indenture not later than six months after the record date. Any such record date shall be at least 30 days prior to the date of the solicitation to the Noteholders by the Company.

## **ARTICLE XI**

### **NOTEHOLDERS' MEETING**

**Section 11.01 PURPOSES OF MEETINGS.** A meeting of Noteholders may be called at any time and from time to time pursuant to this Article XI for any of the following purposes:

(a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to Article XIII;

(b) to remove the Trustee pursuant to Article IX;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to Section 13.02 hereof; or

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(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes of any series, as the case may be, under any other provision of this Indenture or under applicable law.

**Section 11.02 CALL OF MEETINGS BY TRUSTEE.** The Trustee may at any time call a meeting of Holders of Notes to take any action specified in Section 11.01 hereof, to be held at such time and at such place as the Trustee shall determine. Notice of every such meeting of Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given to Holders of the Notes that may be affected by the action proposed to be taken at such meeting in the manner provided in Section 15.10 hereof. Such notice shall be given not less than 20 nor more than 90 days prior to the date fixed for such meeting.

**Section 11.03 CALL OF MEETINGS BY COMPANY OR NOTEHOLDERS.** If at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in aggregate principal amount of the Notes of all series then outstanding, considered as one class, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 11.01 hereof, by giving notice thereof as provided in Section 11.02 hereof.

**Section 11.04 QUALIFICATIONS FOR VOTING.** To be entitled to vote at any meetings of Noteholders a Person shall (a) be a Holder of one or more Notes affected by the action proposed to be taken or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more such Notes. The only Persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives (including employees) of the Trustee and its counsel and any representatives (including employees) of the Company and its counsel.

## Section 11.05 REGULATIONS.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by the Noteholders as provided in Section 11.03 hereof, in which case the Company or Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by the Holders of a majority in aggregate principal amount of the Notes present in person or by proxy at the meeting.

(c) Subject to Section 10.04 hereof, at any meeting each Noteholder or proxy shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by such Noteholder; provided that no vote shall be cast or counted at any meeting in respect of any Note determined to be not outstanding. The chairman of the meeting shall have no right to vote other

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than by virtue of Notes held by such chairman or instruments in writing as aforesaid duly designating such chairman as the person to vote on behalf of other Noteholders. At any meeting of Noteholders duly called pursuant to Section 11.02 or 11.03 hereof, the presence of persons holding or representing Notes in an aggregate principal amount sufficient to take action on any business for the transaction for which such meeting was called shall constitute a quorum. Any meeting of Noteholders duly called pursuant to Section 11.02 or 11.03 hereof may be adjourned from time to time by the Holders of a majority in aggregate principal amount of the Notes present in person or by proxy at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

**Section 11.06 VOTING.** The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballots on which shall be subscribed the signatures of the Holders of Notes or of their representatives by proxy and the principal amount of Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of such meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 11.02 hereof. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee and the Trustee shall have the ballots taken at the meeting attached to such duplicate. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

**Section 11.07 RIGHTS OF TRUSTEE OR NOTEHOLDERS NOT DELAYED.** Nothing in this Article XI shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders of Notes under any of the provisions of this Indenture or of the Notes.

## ARTICLE XII

### CONSOLIDATION, MERGER, SALE, TRANSFER OR CONVEYANCE

**Section 12.01 COMPANY MAY CONSOLIDATE, ETC. ONLY ON CERTAIN TERMS.** The

Company shall not consolidate with or merge into any other corporation or sell, transfer, lease or otherwise dispose of its properties as or substantially as an entirety to any Person unless the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance or transfer and the supplemental indenture referred to in clause (b) below comply with this Article XII and that all conditions precedent herein provided for have been complied with, and the corporation formed by such consolidation or into which the Company is merged or the Person which receives such properties pursuant to such sale, transfer, lease or other disposition (a) shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia; (b) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and premium and interest on all of the Notes and the performance of every covenant of this Indenture

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on the part of the Company to be performed or observed; and (c) immediately after giving effect to the transaction, no Event of Default or event that, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

Section 12.02 SUCCESSOR CORPORATION SUBSTITUTED. Upon any consolidation or merger, or any sale, transfer, lease or other disposition of the properties of the Company substantially as an entirety in accordance with Section 12.01 hereof, the successor corporation formed by such consolidation or into which the Company is merged or the Person to which such sale, transfer or other disposition is made shall succeed to, and be substituted for and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation or Person had been named as the Company herein and the Company shall be released from all obligations hereunder.

## ARTICLE XIII

### SUPPLEMENTAL INDENTURES

#### Section 13.01 SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF NOTEHOLDERS.

(a) The Company, when authorized by Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto, without consent of holders of the Notes, for one or more of the following purposes:

- (1) to make such provision in regard to matters or questions arising under this Indenture as may be necessary or desirable, and not inconsistent with this Indenture or prejudicial to the interests of the Holders in any material respect, for the purpose of supplying any omission, curing any ambiguity, or curing, correcting or supplementing any defective or inconsistent provision;
- (2) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only when there is no Note outstanding created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision or such change or elimination is applicable only to Notes issued after the effective date of such change or elimination;
- (3) to establish the form of Notes of any series as permitted by Section 2.01 hereof or to establish or reflect any terms of any Note of any series determined pursuant to Section 2.05 hereof;
- (4) to evidence the succession of another corporation to the Company as permitted hereunder, and the assumption by any such successor of the covenants of the Company herein and in the Notes;
- (5) to grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority;
- (6) to permit the Trustee to comply with any duties imposed upon it by law;

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(7) to specify further the duties and responsibilities of, and to define further the relationships among, the Trustee, any Authenticating Agent and any paying agent, and to evidence the succession of a successor Trustee as permitted hereunder;

(8) to add to the covenants of the Company for the benefit of the Holders of one or more series of Notes, to add to the security for all of the Notes, to surrender a right or power conferred on the Company herein or to add any Event of Default with respect to one or more series of Notes; and

(9) to make any other change that is not prejudicial to the Holders.

(b) The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(c) Any supplemental indenture authorized by this Section 13.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 13.02 hereof.

#### Section 13.02 SUPPLEMENTAL INDENTURES WITH CONSENT OF NOTEHOLDERS.

(a) With the consent (evidenced as provided in Section 10.01 hereof) of the Holders of a majority in aggregate principal amount of the Notes of all series at the time outstanding, considered as one class, the Company, when authorized by Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture or of any supplemental indenture or of modifying or waiving in any manner the rights of the Noteholders; provided, however, that if there shall be Notes of more than one series Outstanding hereunder and if a proposed supplemental indenture shall directly affect the rights of the Holders of Notes of one or more, but less than all,

of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Notes of all series so directly affected, considered as one class, shall be required; provided further that no such supplemental indenture shall:

(1) change the Stated Maturity of any Note, or reduce the rate (or change the method of calculation thereof) or extend the time of payment of interest thereon, or reduce the principal amount thereof or any premium thereon, or change the coin or currency in which the principal of any Note or any premium or interest thereon is payable, or change the date on which any Note may be redeemed or adversely affect the rights of the Noteholders to institute suit for the enforcement of any payment of principal of or any premium or interest on any Note, in each case without the consent of the Holder of each Note so affected; or

(2) modify this Section 13.02(a) or reduce the aforesaid percentage of Notes, the Holders of which are required to consent to any such supplemental indenture or to reduce the percentage of Notes, the Holders of which are required

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to waive Events of Default, in each case, without the consent of the Holders of all of the Notes affected thereby then outstanding.

(b) Upon the request of the Company, accompanied by a copy of the Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders 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.

(c) A supplemental indenture which changes, waives or eliminates any covenant or other provision of this Indenture (or any supplemental indenture) which has expressly been included solely for the benefit of one or more series of Notes, or which modifies the rights of the Holders of Notes of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Notes of any other series.

(d) It shall not be necessary for the consent of the Holders of Notes under this Section 13.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(e) Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to this Section 13.02, the Trustee shall give notice in the manner provided in Section 16.10 hereof, setting forth in general terms the substance of such supplemental indenture, to all Noteholders. Any failure of the Trustee to give such notice or any defect therein shall not, however, in any way impair or affect the validity of any such supplemental indenture.

**Section 13.03 COMPLIANCE WITH TRUST INDENTURE ACT; EFFECT OF SUPPLEMENTAL INDENTURES.** Any supplemental indenture executed pursuant to this Article XIII shall comply with the TIA. Upon the execution of any supplemental indenture pursuant to this Article XIII, the 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 Noteholders 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 13.04 NOTATION ON NOTES.** Notes of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article XIII may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes of any series so modified as approved by the Trustee and the Board of Directors with respect to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Notes of such series then outstanding.

**Section 13.05 EVIDENCE OF COMPLIANCE OF SUPPLEMENTAL INDENTURE TO BE FURNISHED TRUSTEE.** The Trustee, subject to Sections 9.01 and 9.02 hereof, shall be entitled to receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article XIII and that all conditions precedent to its execution have been met.

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## **ARTICLE XIV**

### **IMMUNITY OF INCORPORATORS,**

### **STOCKHOLDERS, OFFICERS AND DIRECTORS; LIMITATION OF LIABILITY**

**Section 14.01 INDENTURE AND NOTES SOLELY CORPORATE OBLIGATIONS.** No recourse for the payment of the principal of or any premium or interest on any Note, or for any claim based thereon or otherwise in respect thereof, and

no recourse under or upon any obligation, covenant or agreement of the Company, contained in this Indenture, or in any supplemental indenture, or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any 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 all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of the

Notes.

Section 14.02 LIMITATION OF LIABILITY OF TRUSTEE. In no case shall the Bank (or any Person acting as successor trustee under the Indenture) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of the Company hereunder or in any of the other documents contemplated hereby, all such liability, if any, being expressly waived by the parties hereto and any person claiming by, through or under such party.

## ARTICLE XV

### SUBORDINATION OF NOTES

Section 15.01 NOTES SUBORDINATE TO SENIOR INDEBTEDNESS. The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of the Notes of each series, by its acceptance thereof, likewise covenants and agrees, that the payment of the principal of and premium, if any, and interest, if any, on each and all of the Notes is hereby expressly subordinated, to the extent and in the manner set forth in this Article, in right of payment to the prior payment in full of all Senior Indebtedness.

Each Holder of the Notes of each series, by its acceptance thereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article, and appoints the Trustee its attorney-in-fact for any and all such purposes.

Section 15.02 PAYMENT OVER OF PROCEEDS OF NOTES. In the event (a) of any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of the Company or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy, or (b) subject to the provisions of Section 15.03, that a default shall have occurred with respect to the payment of principal of or interest on or other monetary amounts due and payable on any Senior Indebtedness, and such default shall have continued beyond the period of grace, if any, in respect thereof and shall not have been cured or waived or shall not have ceased to exist, or (c) that the principal of and accrued interest on the Notes of any

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series shall have been declared due and payable pursuant to Section 8.01 and such declaration shall not have been rescinded and annulled as provided in Section 8.01, then:

- (1) the holders of all Senior Indebtedness shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Notes are entitled to receive a payment on account of the principal of or interest on the indebtedness evidenced by the Notes, including, without limitation, any payments made pursuant to Articles III and IV;
- (2) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, to which any Holder or the Trustee would be entitled except for the provisions of this Article, shall be paid or delivered by the Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders of the indebtedness evidenced by the Notes or to the Trustee under this Indenture; and
- (3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, in respect of principal of or interest on the Notes or in connection with any repurchase by the Company of the Notes, shall be received by the Trustee or any Holder before all Senior Indebtedness is paid in full, or provision is made for such payment in money or money's worth, such payment or distribution in respect of principal of or interest on the Notes or in connection with any repurchase by the Company of the Notes shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until

all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

Notwithstanding the foregoing, at any time after the 123rd day following the date of deposit of cash or U.S. Government Obligations pursuant to Section 5.01 (provided all conditions set out in such Section shall have been satisfied), the funds so deposited and any interest thereon will not be subject to any rights of holders of Senior Indebtedness including, without limitation, those arising under this Article XV; provided that no event described in clauses (5) and (6) of Section 8.01 with respect to the Company has occurred during such 123-day period.

For purposes of this Article only, 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 or reorganization or readjustment which are subordinate in right of payment to all Senior Indebtedness which may at the time be outstanding to the same extent as, or to a greater extent than, the Notes are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into,

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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 hereof shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 15.02 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article XII hereof. Nothing in Section 15.01 or in this Section 15.02 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 9.06.

**Section 15.03 DISPUTES WITH HOLDERS OF CERTAIN SENIOR INDEBTEDNESS.** Any failure by the Company to make any payment on or perform any other obligation in respect of Senior Indebtedness, other than any indebtedness incurred by the Company or assumed or guaranteed, directly or indirectly, by the Company for money borrowed (or any deferral, renewal, extension or refunding thereof) or any other obligation as to which the provisions of this Section shall have been waived by the Company in the instrument or instruments by which the Company incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default under clause (b) of Section 15.02 if (i) the Company shall be disputing its obligation to make such payment or perform such obligation and (ii) either (A) no final judgment relating to such dispute shall have been issued against the Company which is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (B) in the event that a judgment that is subject to further review or appeal has been issued, the Company shall in good faith be prosecuting an appeal or other proceeding for review and a stay or execution shall have been obtained pending such appeal or review.

**Section 15.04 SUBROGATION.** Senior Indebtedness shall not be deemed to have been paid in full unless the holders thereof shall have received cash (or securities or other property satisfactory to such holders) in full payment of such Senior Indebtedness then outstanding. Upon the payment in full of all Senior Indebtedness, the Holders of the Notes shall be subrogated to the rights of the holders of Senior Indebtedness to receive any further payments or distributions of cash, property or securities of the Company applicable to the holders of the Senior Indebtedness until all amounts owing on the Notes shall be paid in full; and such payments or distributions of cash, property or securities received by the Holders of the Notes, by reason of such subrogation, which otherwise would be paid or distributed to the holders of such Senior Indebtedness shall, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders, be deemed to be a payment by the Company to or on account of Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

**Section 15.05 OBLIGATION OF COMPANY UNCONDITIONAL.** Nothing contained in this Article or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness and the Holders, the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of and interest on the Notes 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 and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

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Upon any payment or distribution of assets or securities of the Company referred to in this Article, the Trustee and the Holders shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon, and all other facts pertinent thereto or to this Article.

**Section 15.06 PRIORITY OF SENIOR INDEBTEDNESS UPON MATURITY.** Upon the maturity of the principal of any Senior Indebtedness by lapse of time, acceleration or otherwise, all matured principal of Senior Indebtedness and interest and premium, if any, thereon shall first be paid in full before any payment of principal or premium or interest, if

any, is made upon the Notes or before any Notes can be acquired by the Company or any sinking fund payment is made with respect to the Notes (except that required sinking fund payments may be reduced by Notes acquired before such maturity of such Senior Indebtedness).

**Section 15.07 TRUSTEE AS HOLDER OF SENIOR INDEBTEDNESS.** The Trustee shall be entitled to all rights set forth in this Article with respect to any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness. Nothing in this Article shall deprive the Trustee of any of its rights as such holder.

**Section 15.08 NOTICE TO TRUSTEE TO EFFECTUATE SUBORDINATION.** Notwithstanding the provisions of this Article or any other provision of the Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Trustee unless and until the Trustee shall have received written notice thereof from the Company, from a Holder or from a holder of any Senior Indebtedness or from any representative or representatives of such holder and, prior to the receipt of any such written notice, the Trustee shall be entitled, subject to Section 9.01, in all respects to assume that no such facts exist; provided, however, that, if prior to the fifth Business Day preceding the date upon which by the terms hereof any such moneys may become payable for any purpose, or in the event of the execution of an instrument pursuant to Sections 5.03 and 5.04 acknowledging satisfaction and discharge of this Indenture, then if prior to the second Business Day preceding the date of such execution, the Trustee shall not have received with respect to such moneys the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, the Trustee may, in its discretion, receive such moneys and/or apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary, which may be received by it on or after such date; provided, however, that no such application shall affect the obligations under this Article of the persons receiving such moneys from the Trustee.

**Section 15.09 MODIFICATION, EXTENSION, ETC., OF SENIOR INDEBTEDNESS.** The holders of Senior Indebtedness may, without affecting in any manner the subordination of the payment of the principal of and premium, if any, and interest, if any, on the Notes, at any time or from time to time and in their absolute discretion, agree with the Company to change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any Senior Indebtedness, or amend or supplement any instrument pursuant to which any Senior Indebtedness is issued, or exercise or refrain from exercising any other of their rights under the Senior Indebtedness including, without limitation, the waiver of default thereunder, all without notice to or assent from the Holders or the Trustee.

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**Section 15.10 TRUSTEE HAS NO FIDUCIARY DUTY TO HOLDERS OF SENIOR INDEBTEDNESS.** With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and objectives as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders if it shall mistakenly pay over or deliver to the Holders or the Company or any other Person, money or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

**Section 15.11 PAYING AGENTS OTHER THAN TRUSTEE.** In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Sections 15.07, 15.08 and 15.10 shall not apply to the Company if it acts as Paying Agent.

**Section 15.12 RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS NOT IMPAIRED.** No right of any present or future holder of Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

**Section 15.13 EFFECT OF SUBORDINATION PROVISIONS; TERMINATION.** Notwithstanding anything contained herein to the contrary, other than as provided in the immediately succeeding sentence, all the provisions of this Indenture shall be subject to the provisions of this Article, so far as the same may be applicable thereto.

Notwithstanding anything contained herein to the contrary, the provisions of this Article XV shall be of no further effect, and the Notes shall no longer be subordinated in right of payment to the prior payment of Senior Indebtedness, if the Company shall have delivered to the Trustee a notice to such effect. Any such notice delivered by the Company shall not be deemed to be a supplemental indenture for purposes of Article XIII hereof.

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

**Section 16.01 PROVISIONS BINDING ON COMPANY'S SUCCESSORS.** All the covenants, stipulations, promises and agreements made by the Company in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 16.02 OFFICIAL ACTS BY SUCCESSOR CORPORATION. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation that shall at the time be the lawful successor of the Company.

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Section 16.03 SET-OFF. Notwithstanding anything to the contrary in this Indenture or in any Note of any series, prior to the dissolution of any Securities Trust that has issued Trust Securities related to a series of Notes, the Company shall have the right to set-off and apply against any payment it is otherwise required to make hereunder or thereunder with respect to the principal of or interest on the Notes of such series with and to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment with respect to the Trust Securities of the series related to such series of Notes under the applicable Guarantee. Contemporaneously with, or as promptly as practicable after, any such payment under such Guarantee, the Company shall deliver to the Trustee an Officers' Certificate (upon which the Trustee shall be entitled to rely conclusively without any requirement to investigate the facts contained therein) to the effect that such payment has been made and that, as a result of such payment, the corresponding payment under the related series of Notes has been set-off in accordance with this Section 16.03.

Section 16.04 NOTICES. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Noteholders on the Company may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Company with the Trustee) at the Principal Executive Offices of the Company, to the attention of the Secretary. Any notice, direction, request or demand by any Noteholder or the Company to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made to, or sent by registered mail to, the Corporate Trust Officer of the Trustee to the attention of the Corporate Trust Administration, but shall be deemed effective only upon actual receipt.

Section 16.05 GOVERNING LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL. This Indenture and each Note shall be governed by and deemed to be a contract under, and construed in accordance with, the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State without regard to conflicts of law principles thereof. Any action or proceeding arising out of or relating to this Indenture or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York in each case located in the City of New York, and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in such courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court has been brought in an inconvenient forum. Service of any process, summons, notice or document by mail to the address of the Principal Executive Offices of the Company shall be effective service of process upon the Company for any suit, action or other proceeding brought in any such court. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT OF TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 16.06 EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT.

(a) Upon any application or demand by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture (including any covenants compliance with which constitutes a condition precedent) relating to the proposed action have

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been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificates delivered pursuant to Section 6.06 hereof) shall include (1) a statement that each Person making such certificate or opinion has read such covenant or condition and the definitions relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of each such Person, such Person has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with;

and (4) a statement as to whether or not, in the opinion of each such Person, such condition or covenant has been complied with.

(c) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to



some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(d) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such certificate or opinion is based are erroneous. Any such certificate or opinion of counsel delivered under the Indenture may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such person knows, or in the exercise of reasonable care should know, that the certificate or opinion of representations with respect to such matters are erroneous. Any opinion of counsel delivered hereunder may contain standard exceptions and qualifications reasonably satisfactory to the Trustee.

(e) Any certificate, statement or opinion of any officer of the Company, or of counsel, may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an independent public accountant or firm of accountants, unless such officer or counsel, as the case may be, knows that the certificate or opinions or representations with

respect to the accounting matters upon which the certificate, statement or opinion of such officer or counsel may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate or opinion of any firm of independent public accountants filed with the Trustee shall contain a statement that such firm is independent.

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

**Section 16.7 BUSINESS DAYS.** Unless otherwise provided pursuant to Section 2.05(c) hereof, in any case where the date of Maturity of the principal of or any premium or interest on any Note or the date fixed for redemption of any Note is not a Business Day, then payment of such principal or any premium or interest need not be made on such date but may be made on the next

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succeeding Business Day with the same force and effect as if made on the date of Maturity or the date fixed for redemption.

**Section 16.8 TRUST INDENTURE ACT TO CONTROL.** If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the TIA, such required provision of the TIA shall govern.

**Section 16.9 TABLE OF CONTENTS, HEADINGS, ETC.** The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 16.10 EXECUTION IN COUNTERPARTS.** This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

**Section 16.11 MANNER OF MAILING NOTICE TO NOTEHOLDERS.**

(a) Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or the Company to or on the Holders of Notes, as the case may be, shall be given or served by first-class mail, postage prepaid, addressed to the Holders of such Notes at their last addresses as the same appear on the register for the Notes referred to in Section 2.06, and any such notice shall be deemed to be given or served by being deposited in a post office letter box in the form and manner provided in this Section 16.10. In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give notice to any Holder by mail, then such notification to such Holder as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

(b) The Company shall also provide any notices required under this Indenture by publication, but only to the extent that such publication is required by the TIA, the rules and regulations of the Commission or any securities exchange upon which any series of Notes is listed.

**Section 16.12 APPROVAL BY TRUSTEE OF COUNSEL.** Wherever the Trustee is required to approve counsel who is to furnish evidence of compliance with conditions precedent in this Indenture, such approval by the Trustee shall be deemed to have been given upon the taking of any action by the Trustee pursuant to and in accordance with the certificate or opinion so furnished by such counsel.

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IN WITNESS WHEREOF, KANSAS CITY POWER & LIGHT COMPANY has caused this Indenture to be signed and acknowledged by its Vice President of Finance, Chief Financial Officer, and Treasurer, and attested by its Corporate

Secretary, and The Bank of New York has caused this Indenture to be signed and acknowledged by its duly authorized officer, as of the day and year first written above.

KANSAS CITY POWER & LIGHT  
COMPANY

By



Senior Vice President - Finance, Chief  
Financial Officer and Treasurer

ATTEST:

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
The Bank of New York, As Trustee,

By:

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PREFERRED SECURITIES GUARANTEE AGREEMENT

KCPL Financing \_\_

Dated as of \_\_\_\_\_, 2003

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PREFERRED SECURITIES GUARANTEE AGREEMENT

THIS PREFERRED SECURITIES GUARANTEE AGREEMENT (this "Guarantee Agreement"), dated as of \_\_\_\_\_, 2003, is executed and delivered by KANSAS CITY POWER & LIGHT COMPANY, a Missouri corporation (the "Guarantor"), and The Bank of New York, a New York banking corporation duly organized and existing under the laws of the United States, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of KCPL Financing \_\_, a Delaware statutory trust (the "Issuer").

W I T N E S S E T H:

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration"), dated as of \_\_\_\_\_, 2003, among the trustees of the Issuer, the Guarantor as Sponsor and the holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing on the date hereof \$\_\_\_\_\_ aggregate stated liquidation amount of its \_\_\_\_% Taxable Flexible Trust Preferred Securities (the "Preferred Securities"); and

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 Guarantee Agreement, 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 Guarantee Agreement for the benefit of the Holders.

ARTICLE I

DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** In this Guarantee Agreement, unless the context otherwise requires: (a) capitalized terms used but not defined in this Guarantee Agreement have the respective meanings assigned to them in the Amended and Restated Declaration of Trust dated as of \_\_\_\_\_, 2003 (the "Declaration"); (b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout; and (c) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires.

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**Affiliate:**

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

**Business Day:**

The term "Business Day" means any day other than a day on which banking institutions in New York, New York are authorized or required by any applicable law to close.

**Common Securities:**

The term "Common Securities" means the securities representing common undivided beneficial interests in the assets of the Issuer.

**Covered Person:**

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

**Event of Default:**

The term "Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement.

**Guarantee Payments:**

The term "Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accrued and unpaid Distributions that are required to be paid on the Preferred Securities to the extent the Issuer 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 Issuer has funds available therefor, with respect to any Preferred Securities called for redemption by the Issuer, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Subordinated Debt to the Holders in exchange for Preferred Securities as provided in the Declaration or the redemption of all of the Preferred Securities), 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 Issuer has funds available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer (in either case, the "Liquidation Distribution").

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**Guarantee Trustee:**

The term "Guarantee Trustee" means The Bank of New York, as trustee under this Guarantee Agreement, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means such Successor Guarantee Trustee.

**Holder:**

The term "Holder" shall mean any holder, as registered on the books and records of the Issuer, of any Preferred Securities; provided, however, that, in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any Affiliate of the Guarantor.

**Indemnified Person:**

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

**Indenture:**

The term "Indenture" means the Indenture dated as of \_\_\_\_\_, 2003, between the Guarantor (the "Debenture Issuer") and The Bank of New York, as trustee, and any amendment thereto and any indenture supplemental thereto pursuant to which certain unsecured subordinated debt securities of the Debenture Issuer are to be issued to the Property Trustee of the Issuer.

**Majority in liquidation amount of the Securities:**

The term "Majority in liquidation amount of the Securities" means, except as provided by the Trust Indenture Act, a vote by Holder(s) of Preferred Securities, voting separately as a class, of more than 50% of the liquidation amount (including the stated amount that would be paid on redemption, liquidation or maturity, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all Preferred Securities.

**Officers' Certificate:**

The term "Officers' Certificate" means, with respect to any Person, a certificate signed by two Authorized Officers of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

(a) a statement that each such officer signing the Officers' Certificate has read the covenant or condition and the definition relating thereto;

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(b) a brief statement of the nature and scope of the examination or investigation undertaken by each such 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:**

The term "Person" means any individual, corporation, partnership, limited liability company, joint venture, joint stock company, unincorporated association or government or any agency or political subdivision thereof, or any other entity of whatever nature.

**Responsible Officer:**

The term "Responsible Officer" means any officer within the corporate trust department of the Guarantee Trustee, including any vice-president, any assistant vice-president, any assistant treasurer, any trust officer or any other officer of the Property 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 and who shall have direct responsibility for the administration of the duties of the Guarantee Trustee.

**66-2/3% in liquidation amount of the Securities:**

The term "66-2/3% in liquidation amount of the Securities" means, except as provided in the terms of the Preferred Securities or the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or outstanding Common Securities, voting separately as a class, representing 66-2/3% of the aggregate stated liquidation amount (including the stated amount that would be paid on redemption, liquidation or maturity, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of such class.

**Subordinated Debt:**

The term "Subordinated Debt" means the series of unsecured subordinated debt securities of the Guarantor designated the \_\_\_\_% Junior Subordinated Deferrable Interest Debentures due \_\_\_\_\_, \_\_\_\_ held by the Property Trustee of the Issuer.

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**Successor Guarantee Trustee:**

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

**Trust Indenture Act:**

The term "Trust Indenture Act" means the Trust Indenture Act of 1939.

**Section 1.2. Interpretation.** Each definition in this Guarantee Agreement includes the singular and the plural, and references to the neuter gender include the masculine and feminine where appropriate. Terms which relate to accounting matters shall be interpreted in accordance with generally accepted accounting principles in effect from time to time. References to any statute mean such statute as amended at the time and include any successor legislation. The word "or" is not exclusive, and the words "herein," "hereof" and "hereunder" refer to this Guarantee Agreement as a whole. The headings to the Articles and Sections are for convenience of reference and shall not

affect the meaning or interpretation of this Guarantee Agreement. References to Articles and Sections mean the Articles and Sections of this Guarantee Agreement unless otherwise specified.

## ARTICLE II

### TRUST INDENTURE ACT

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

(a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Guarantee Agreement 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 2.2. Lists of Holders of Preferred Securities.**

(a) The Guarantor shall provide the Guarantee Trustee with a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the Preferred Securities ("List of Holders") as of such date, (i) within ten Business Days after January 1 and June 30 of 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 14 days before such List of Holders is given to the Guarantee Trustee, *provided* that the Guarantor shall not be obligated to provide such List of Holders at any time when the List of Holders does not differ from the most recent List of

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Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

**Section 2.3. Reports by the Guarantee Trustee.** Within 60 days after May 15 of each year, the Guarantee Trustee shall provide to the Holders of the Preferred Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

**Section 2.4. Periodic Reports to Guarantee Trustee.** The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314 (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

**Section 2.5. Evidence of Compliance with Conditions Precedent.** The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee 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) 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 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 Guarantee Agreement, 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. Events of Default; Notice.**



(a) The Guarantee Trustee shall, within 90 days after a Responsible Officer of the Guarantee Trustee has knowledge of 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 known to the Guarantee Trustee, unless such defaults have been cured before the giving of such notice, provided, that the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of

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such notice is in the interests of the Holders of the Preferred Securities.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless a Responsible Officer of the Guarantee Trustee charged with the administration of the Declaration shall have obtained written notice, of such Event of Default.

**Section 2.8. Conflicting Interests.** The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### ARTICLE III

#### POWERS, DUTIES AND RIGHTS OF

#### GUARANTEE TRUSTEE

**Section 3.1. Powers and Duties of the Guarantee Trustee.**

(a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders of the Preferred Securities, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except to a Holder of Preferred Securities exercising the rights of such Holder pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders of the Preferred Securities.

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, 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 Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

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

obligations shall be read into this Guarantee Agreement against the Guarantee Trustee; and

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

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

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

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

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against such risk or liability is not reasonably assured to it.

### **Section 3.2. Certain Rights of Guarantee Trustee.**

(a) Subject to the provisions of Section 3.1:

(i) The Guarantee Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, security 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 Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate.

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

(iv) The Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or reregistration thereof).

(v) The Guarantee Trustee may consult with its 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 or suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Guarantee Trustee shall

have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

(vi) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction,

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including such reasonable advances as may be requested by the Guarantee Trustee; provided that, nothing contained in this Section 3.2(a)(vi) shall, however, relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement.

(vii) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, security or other papers or documents, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

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

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

(x) Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request instructions from the Holders of a Majority in liquidation amount of the Preferred Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be fully protected in acting in accordance with such instructions.

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

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**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 Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representation as to the validity or sufficiency of this Guarantee Agreement.

#### ARTICLE IV

#### GUARANTEE TRUSTEE

#### **Section 4.1. Guarantee Trustee; Eligibility.**

(a) There shall at all times be a Guarantee Trustee which shall:

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

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible so to act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

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

#### **Section 4.2. Appointment, Removal and Resignation of Guarantee Trustee.**

(a) Subject to Section 4.2(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation or to the Guarantee Trustee a notice of removal, the retiring Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

#### 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 Issuer), as and when due, regardless of any defense, right of set-off or counterclaim that the Guarantor may have or assert against any Person. 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 Issuer to pay such amounts to the Holders.

**Section 5.2. Waiver of Notice and Demand.** The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

**Section 5.3. Obligations Not Affected.** The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

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(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Subordinated Debt permitted by the Indenture);

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor 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 Holders.**

(a) The Holders of a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement.

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(b) Any Holder of Preferred Securities may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against or requesting or directing that action be taken by the Guarantee Trustee or any other Person.

**Section 5.5. Guarantee of Payment.** This Guarantee Agreement creates a guarantee of payment and not of collection.

**Section 5.6. Subrogation.** The Guarantor shall be subrogated to all (if any) rights of the Holders of Preferred Securities against the Issuer in respect of any amounts paid to such Holders by the Guarantor under this Guarantee Agreement; 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 Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. 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 Issuer 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 Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

## ARTICLE VI

### SUBORDINATION

**Section 6.1. Subordination.** This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other liabilities of the Guarantor, including the Subordinated Debt, except those liabilities of the Guarantor made *pari passu* or subordinate by their terms, (ii) *pari passu* with the most senior preferred stock 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 (iii) senior to the Guarantor's common stock.

## ARTICLE VII

### TERMINATION

**Section 7.1. Termination.** This Guarantee Agreement shall terminate upon (i) full payment of the Redemption Price of all Preferred Securities, (ii) upon the distribution of the Subordinated

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Debt to the Holders of all of the Preferred Securities in exchange for all of the Preferred Securities or (iii) upon full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder of Preferred Securities must restore payment of any sums paid under the Preferred Securities or under this Guarantee Agreement.

## 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 Guarantee Agreement 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 Guarantee Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's 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 Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Preferred Securities might properly be paid.

## **Section 8.2. Indemnification.**

(a) To the fullest extent permitted by applicable law, the Guarantor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Guarantee Agreement and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Guarantor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Guarantor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 8.2(a).

(c) The rights of indemnification are set forth in this Section 8.2 shall survive the termination of this Guarantee Agreement and the resignation or removal of the Guarantee Trustee.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.1. Successors and Assigns.** All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding.

**Section 9.2. Amendments.** Except with respect to any changes that do not materially adversely affect the rights of Holders (in which case, no consent of Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of at least 66-2/3% in liquidation amount of the Securities. The provisions of Section 12.2 of the Declaration with respect to meetings of Holders of the Preferred Securities apply to the giving of such approval.

**Section 9.3. Notices.** All notices provided for in this Guarantee Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

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

The Bank of New York  
101 Barclay Street  
New York, NY 10286  
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):

Kansas City Power & Light Company  
1201 Walnut

Kansas City, Missouri 64106-2124  
Attention: Treasurer

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

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

**Section 9.4. Benefit.** This Guarantee Agreement 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 GUARANTEE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND ANY COURT IN THE STATE OF NEW YORK LOCATED IN THE CITY AND COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS GUARANTEE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS GUARANTEE AGREEMENT OR ANY DOCUMENT OR ANY INSTRUMENT REFER RED TO HEREIN OR THE SUBJECT MATTER HEREOF MAY NOT BE LIMITED IN OR BY SUCH COURTS. THE GUARANTOR AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS GUARANTEE AGREEMENT OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK.

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

KANSAS CITY POWER & LIGHT COMPANY

By:

[REDACTED]  
Name:  
Title:

THE BANK OF NEW YORK, Not in its individual capacity but solely as Guarantee Trustee

By:

[REDACTED]  
Name:  
Title:



August 26, 2003

KCPL Financing II  
KCPL Financing III  
c/o Kansas City Power & Light Company  
1201 Walnut  
Kansas City, MO 64106-2124

Ladies and Gentlemen:

We have acted as special Delaware counsel for KCPL Financing II and KCPL Financing III, each a Delaware statutory trust (collectively the "Trusts", and individually a "Trust"), in connection with the issuance by the Trusts of the Preferred Securities (defined below).

For purposes of giving this opinion, our examination of documents has been limited to originals or copies of the following documents (collectively referred to herein as the "Documents"):

(a) The Certificate of Trust of each of the Trusts (the "Trust Certificates"), dated December 10, 1996, as filed in the office of the Delaware Secretary of State on December 11, 1996;

(b) The Declaration of Trust of each of the Trusts, dated as of December 10, 1996, among Kansas City Power & Light Company, a Missouri corporation (the "Company"), and the trustees of the respective Trusts named therein;

(c) The Registration Statement (the "Registration Statement") on Form S-3, including a prospectus (the "Prospectus"), relating to the Trust Preferred Securities (the "Preferred Securities") of the Trusts, representing preferred undivided beneficial interests in the assets of the respective Trusts, as filed by the Company, the Trusts and others as set forth therein, with the Securities and Exchange Commission on August 26, 2003;

(d) A form of Amended and Restated Declaration of Trust of each of the Trusts, to be entered into among the Company, the trustees of each respective Trust named therein and

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the holders, from time to time, of undivided beneficial interests in each respective Trust (the "Declarations"), attached as an exhibit to the Registration Statement; and

(e) A Certificate of Good Standing for each of the Trusts, dated July 25, 2003, obtained from the Delaware Secretary of State.

Initially capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Declarations.

For purposes of this opinion, we have not reviewed any documents other than the Documents. In particular, we have not reviewed any document (other than the Documents) that is referred to in, or incorporated by reference, into the Documents. We have expressly 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 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.

We have assumed (i) the genuineness of the signatures of, the authority of, and the legal capacity of, each natural person signing the docs on behalf of the respective parties, (ii) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (iii) the genuineness of all signatures and the authenticity and completeness of all records, certificates, instruments and documents submitted to us as originals; and (iv) the conformity to authentic originals of all records, certificates, instruments and documents submitted to us as certified, conformed, photostatic or facsimile copies thereof.

For purposes of this opinion, we have assumed (i) that each Declaration constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, including with respect to the creation, operation and termination of each respective Trust, and that the Declarations and the Trust Certificates are in full force and effect and have not been amended, (ii) the due creation or due formation, as the case may be, and valid existence in good standing of each party (other than the Trusts) to the Documents under the laws of the jurisdiction governing its creation, organization or formation, (iii) that each of the parties to the Documents has the power and authority to execute and deliver, and to perform its obligations thereunder, (iv) the due authorization, execution and delivery by all parties thereto of all Documents, (v) the receipt by each Person to whom a Preferred Security is to be issued by each respective Trust (collectively, the "Security Holders") of a Certificate for such Preferred Security and the full payment for the Preferred Security acquired by it, in accordance with each respective Declaration and the Registration Statement; and (vi) that the Preferred Securities are issued and

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sold to the Security Holders in accordance with each respective Declaration and the Registration Statement.

Based upon the foregoing and subject to the exceptions, qualifications and limitations herein set forth, we are of the opinion that:

1. Each Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act, 12 Del. C. (section symbol) 3801, et seq. (the "Statutory Trust Act").

2. The Preferred Securities issued by each Trust will represent valid, fully paid and non-assessable undivided beneficial interests in the assets of such Trust.

3. The Security Holders of the Trusts, as beneficial owners of the Trusts, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit under the General Corporation Law of the State of Delaware.

With respect to the opinions set forth in paragraphs 2 and 3 above, we note that the Security Holders of each Trust may be obligated to make payments as set forth in each respective Declaration.

We express no opinion herein as to the laws of any jurisdiction except the laws of the State of Delaware (excluding any tax laws, fraudulent conveyance laws, fraudulent transfer laws and securities laws, and rules, regulations and orders thereunder, and further excluding judicial decisions to the extent that they deal with any of the foregoing). This opinion is given as of the date hereof and is based upon present laws and reported court decisions as they exist and are construed as of the date hereof.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. In addition, we hereby consent to the use of our name under the heading "Legal Matters" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of Persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

/s/Pepper Hamilton LLP

August 26, 2003

Kansas City Power & Light Company  
1201 Walnut  
Kansas City, MO 64106

Ladies and Gentlemen:

As counsel to Kansas City Power & Light Company (the "COMPANY"), in connection with the filing by the Company with the Securities and Exchange Commission (the "COMMISSION") of the Registration Statement on Form S-3 (the "REGISTRATION STATEMENT") with respect to up to \$255,000,000 maximum aggregate offering price of (1) Senior Debt Securities (the "SENIOR DEBT SECURITIES") to be issued by the Company, (2) Subordinated Debt Securities (the "SUBORDINATED DEBT SECURITIES") to be issued by the Company, (3) Trust Preferred Securities (the "TRUST PREFERRED SECURITIES") to be issued by KCPL Financing II and KCPL Financing III, and (4) the Company's guarantees with respect to the Trust Preferred Securities (the "GUARANTEES") together with the foregoing securities, (the "SECURITIES"), in each case, to be issued and sold from time to time pursuant to Rule 415 under the Securities Act of 1933, as amended (the "SECURITIES ACT").

The Senior Debt Securities will be issued pursuant to the form of Indenture (Exhibit 4.d) between the Company and The Bank of New York, as trustee (the "SENIOR INDENTURE"), the Subordinated Debt Securities will be issued pursuant to the form of Indenture (Exhibit 4.e) between the Company and The Bank of New York, as Trustee (the "SUBORDINATED INDENTURE") and the Guarantees will be issued pursuant to one or more guarantee agreements between the Company and The Bank of New York, as guarantee trustee named therein (each, a "GUARANTEE AGREEMENT") (Exhibit 4.i).

I have reviewed copies of the Registration Statement (including the exhibits thereto), the Articles of Incorporation and By-Laws of the Company as in effect on the date hereof, corporate and other relevant documents, records and papers. I am a member of the Bar of the State of Missouri and, for purposes of this opinion, do not hold myself out as an expert of the laws of any jurisdiction other than the State of Missouri.

On the basis of such review and assuming that (i) the applicable provisions of the Securities Act, the Trust Indenture Act of 1939, as amended, and the securities or "blue sky" laws of various states shall have been complied with, (ii) appropriate resolutions have been adopted by the Board of Directors of the Company and (iii) the applicable Securities have been issued and sold upon the terms specified in such resolutions and in any required orders of the Commission or other applicable regulatory approvals, I am of the opinion that:

1. When (i) the Senior Indenture to be entered into, or otherwise executed or adopted, in connection with the issuance of the Senior Debt Securities, (ii) the Subordinated Indenture to be entered into, or otherwise executed or adopted, in connection with the issuance of the Subordinated Debt Securities or (iii) the Guarantee Agreements, as applicable, have been duly executed and delivered by the proper officers of the Company and The Bank of New York, as trustees therein, and when the Senior Debt Securities, the Subordinated Debt Securities and the Guarantees, as the case may be, have been duly executed, authenticated, delivered and paid for in accordance with the terms of the Senior Indenture, the Subordinated Indenture and the Guarantee Agreements, respectively, and on the terms and conditions set forth in the Registration Statement, the prospectus contained therein and the applicable supplement

thereto, the Senior Debt Securities, the Subordinated Debt Securities and the Guarantees will be legally issued and will constitute the valid and binding obligations of the Company, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights.

I hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the references to me under the heading "Legal Matters" in the related prospectus.

Very truly yours,

/s/Jeanie Sell Latz

Jeanie Sell Latz  
Executive Vice President-Corporate  
and Shared Services and Secretary

## KANSAS CITY POWER &amp; LIGHT COMPANY

## COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

	Year to date June 30					
	2003	2002	2001	2000	1999	1998
	(Thousands)					
Income from continuing operations before cumulative effect of changes in accounting principle	35,058	\$ 102,666	\$ 126,896	\$ 128,631	\$ 81,915	\$ 120,722
Add:						
Equity investment (income) loss	-	-	(24,514)	19,441	24,951	11,683
Minority interests in subsidiaries	-	-	(897)	-	1	(2,222)
Income subtotal	35,058	102,666	101,485	148,072	106,867	130,183
Add:						
Taxes on income	24,044	62,857	39,389	53,166	3,180	32,800
Kansas City earnings tax	276	635	583	421	602	864
Total taxes on income	24,320	63,492	39,972	53,587	3,782	33,664
Interest on value of leased property	3,717	7,093	10,679	11,806	8,577	8,482
Interest on long-term debt	27,693	63,845	78,915	60,956	51,327	57,012
Interest on short-term debt	225	1,218	8,883	11,537	4,362	295
Mandatorily redeemable Preferred Securities	6,225	12,450	12,450	12,450	12,450	12,450
Other interest expense and amortization	2,078	3,772	5,188	2,927	3,573	4,457
Total fixed charges	39,938	88,378	116,115	99,676	80,289	82,696
Earnings before taxes on income and fixed charges	99,316	254,536	257,572	301,335	190,938	246,543
Ratio of earnings to fixed charges	2.49	2.88	2.22	3.02	2.38	2.98

**INDEPENDENT AUDITORS' CONSENT**

We consent to the incorporation by reference in this Registration Statement of Kansas City Power and Light Company on Form S-3 of our report dated February 27, 2003 (August 14, 2003 as to Note 20) (which report expresses an unqualified opinion and includes an explanatory paragraph relating to a change in accounting for goodwill and other intangible assets), on the consolidated financial statements and the related financial statement schedule of Kansas City Power and Light Company for the year ended December 31, 2002 appearing in the Current Report on Form 8-K/A dated August 20, 2003 of Kansas City Power and Light Company. We also consent to the reference to us under the heading "Experts" in the Prospectus, which is part of the Registration Statement.

/s/ DELOITTE & TOUCHE LLP

Kansas City, Missouri  
August 25, 2003

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated February 5, 2002, except with respect to the reclassification of the 2001 and 2000 information in Note 13 as to which the date is May 22, 2002; the 2001 transitional disclosures relating to the adoption of Statement of Financial Accounting Standards No. 142 as described in Note 6 as to which the date is February 21, 2003; and the reclassification described in the last paragraph of Note 19 relating to the adoption of Statement of Financial Accounting Standards No. 145, the reclassification to the 2001 financial statements relating to the discontinued operations as described in Note 20, and the 2001 and 2000 transitional disclosures relating to the adoption of Statement of Financial Accounting Standards No. 143 as described in Note 12 as to which the date is August 13, 2003, relating to the financial statements of Kansas City Power & Light Company (a wholly-owned subsidiary of Great Plains Energy Incorporated), which appears in Kansas City Power & Light Company's Current Report on Form 8-K/A (Amendment No. 1) dated August 14, 2003. We also consent to the incorporation by reference in the above named registration statement of our report dated February 5, 2002, except with respect to the reclassification to the 2001 financial statement schedule information relating to the discontinued operations as described in Note 1 as to which the date is August 13, 2003, relating to the 2001 and 2000 financial statement schedule information of Kansas City Power & Light Company, which also appears in the Current Report on Form 8-K/A (Amendment No. 1) dated August 14, 2003. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/PricewaterhouseCoopers LLP  
PricewaterhouseCoopers LLP

Kansas City, Missouri  
August 25, 2003

**INDEPENDENT AUDITORS' CONSENT**

We consent to the incorporation by reference in this Registration Statement on Form S-3 of Kansas City Power & Light Company of our report dated January 30, 2002 (relating to the financial statements of DTI Holdings, Inc. and Subsidiaries (the "Company") not presented separately herein and which report expresses an unqualified opinion and includes explanatory paragraphs referring to the Company's filing for reorganization under Chapter 11 of the Federal Bankruptcy Code, substantial doubt about the Company's ability to continue as a going concern and an impairment charge recorded by the Company), appearing in the Current Report on Form 8-K/A dated August 20, 2003 of Kansas City Power and Light Company. We also consent to the reference to us under the heading "Experts" in the Prospectus, which is part of the Registration Statement.

/s/ DELOITTE & TOUCHE LLP

St. Louis, Missouri  
August 25, 2003



**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12<sup>th</sup> day of July, 2003.

/s/Bernard J. Beaudoin



Bernard J. Beaudoin

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 12<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared Bernard J. Beaudoin, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman



Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12<sup>th</sup> day of July, 2003.

/s/David L. Bodde



David L. Bodde

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 12<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared David L. Bodde, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman



Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

---

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15<sup>th</sup> day of July, 2003.

/s/Mark A. Ernst



Mark A. Ernst

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 15<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared Mark A. Ernst, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman



Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12<sup>th</sup> day of July, 2003.

/s/Randall C. Ferguson, Jr.



Randall C. Ferguson, Jr.

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 12<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared Randall C. Ferguson, Jr., to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman



Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16<sup>th</sup> day of July, 2003.

/s/William K. Hall

William K. Hall

STATE OF MISSOURI )  
 ) ss  
COUNTY OF JACKSON )

On this 16<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared William K. Hall, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman

Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20<sup>th</sup> day of July, 2003.

/s/Luis A. Jimenez

Luis A. Jimenez

STATE OF MISSOURI )  
 ) ss  
COUNTY OF JACKSON )

On this 20<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared Luis A. Jimenez, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman

My Commission Expires:

April 8, 2004

---


**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14<sup>th</sup> day of July, 2003.

/s/James A. Mitchell


  
James A. Mitchell

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 14<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared James A. Mitchell, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman

  
Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

---

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14<sup>th</sup> day of July, 2003.

/s/William C. Nelson



William C. Nelson

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 14<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared William C. Nelson, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman



Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, her true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21<sup>st</sup> day of July, 2003.

/s/Linda H. Talbott



Linda H. Talbott

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 21<sup>st</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared Linda H. Talbott, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman

Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, a Director of Kansas City Power & Light Company, a Missouri corporation, does hereby constitute and appoint Bernard J. Beaudoin, Jeanie Sell Latz or Mark G. English, his true and lawful attorney and agent, with full power and authority to execute in the name and on behalf of the undersigned as such director a Registration Statement on Form S-3, and all amendments thereto; hereby granting unto such attorney and agent full power of substitution and revocation in the premises; and hereby ratifying and confirming all that such attorney and agent may do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24<sup>th</sup> day of July, 2003.

/s/Robert H. West

Robert H. West

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF JACKSON    )

On this 24<sup>th</sup> day of July, 2003, before me the undersigned, a Notary Public, personally appeared Robert H. West, to be known to be the person described in and who executed the foregoing instrument, and who, being by me first duly sworn, acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

/s/Jacquetta L. Hartman

Notary Public  
Ray County, Missouri

My Commission Expires:

April 8, 2004

## FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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)

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York (State of incorporation if not a U.S. national bank)	13-5160382 (I.R.S. employer identification no.)
One Wall Street, New York, N.Y. (Address of principal executive offices)	10286 (Zip code)

KANSAS CITY POWER & LIGHT COMPANY  
(Exact name of obligor as specified in its charter)

Missouri (State or other jurisdiction of incorporation or organization)	44-0308720 (I.R.S. employer identification no.)
1201 Walnut Kansas City, Missouri (Address of principal executive offices)	64106-2124 (Zip code)

Senior Debt Securities  
(Title of the indenture securities)

**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.**

Name	Address
Superintendent of Banks of the State of New York	2 Rector Street, New York, N.Y. 10006, and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429
New York Clearing House Association	New York, New York 10005



**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

**Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).**

1. A copy of the Organization Certificate of The Bank of New York (formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672 and Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637.)

4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)

6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

---

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

---

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 22nd day of August, 2003.

THE BANK OF NEW YORK

By: /S/ MARY LAGUMINA  
Name: MARY LAGUMINA  
Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business March 31, 2003, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

**ASSETS**

Dollar Amounts  
In Thousands

Cash and balances due from depository  
institutions:

Noninterest-bearing balances and currency and

\$4,389,492

coin	
Interest-bearing balances	3,288,212
Securities:	
Held-to-maturity securities	654,763
Available-for-sale securities	17,626,360
Federal funds sold in domestic offices	1,759,600
Securities purchased under agreements to resell	911,600
Loans and lease financing receivables:	
Loans and leases held for sale	724,074
Loans and leases, net of unearned income.....	32,368,718
LESS: Allowance for loan and lease losses.....	826,505
Loans and leases, net of unearned income and allowance.....	31,542,213
Trading Assets	7,527,662
Premises and fixed assets (including capitalized leases)	825,706
Other real estate owned	164
Investments in unconsolidated subsidiaries and associated companies	260,940
Customers' liability to this bank on acceptances outstanding	225,935
Intangible assets	
Goodwill	2,027,675
Other intangible assets	75,330
Other assets	4,843,295
	-----
Total assets	\$76,683,021
	=====

## LIABILITIES

### Deposits:

In domestic offices \$33,212,852

Noninterest-bearing.....12,997,086

Interest-bearing.....20,215,766

In foreign offices, Edge and Agreement  
subsidiaries, and IBFs 24,210,507

Noninterest-bearing.....595,520

Interest-bearing.....23,614,987

Federal funds purchased in domestic offices 375,322

Securities sold under agreements to repurchase 246,755

Trading liabilities 2,335,466

Other borrowed money:  
(includes mortgage indebtedness and obligations  
under capitalized leases) 959,997

Bank's liability on acceptances executed and  
outstanding 227,253

Subordinated notes and debentures 2,090,000

Other liabilities 5,716,796

Total liabilities \$69,374,948

Minority interest in consolidated subsidiaries 540,772

## EQUITY CAPITAL

Perpetual preferred stock and related surplus 0

Common stock 1,135,284

Surplus 1,056,295

Retained earnings 4,463,720

Accumulated other comprehensive income (112,002)

Other equity capital components 0

Total equity capital	6,767,301 -----
Total liabilities minority interest and equity capital	\$76,683,021 =====

---

I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,  
Senior Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi)  
Gerald L. Hassell)  
Alan R. Griffith )

Directors

## FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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)

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York (State of incorporation if not a U.S. national bank)	13-5160382 (I.R.S. employer identification no.)
One Wall Street, New York, N.Y. (Address of principal executive offices)	10286 (Zip code)

KANSAS CITY POWER & LIGHT COMPANY  
(Exact name of obligor as specified in its charter)

Missouri (State or other jurisdiction of incorporation or organization)	44-0308720 (I.R.S. employer identification no.)
1201 Walnut Kansas City, Missouri (Address of principal executive offices)	64106-2124 (Zip code)

Subordinated Debt Securities  
(Title of the indenture securities)

**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.**

Name	Address
Superintendent of Banks of the State of New York	2 Rector Street, New York, N.Y. 10006, and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

**Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).**

1. A copy of the Organization Certificate of The Bank of New York (formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672 and Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637.)

4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)

6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

---

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

---

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 22nd day of August, 2003.

THE BANK OF NEW YORK

By: /S/ MARY LAGUMINA  
Name: MARY LAGUMINA  
Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business March 31, 2003, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

ASSETS

Dollar Amounts  
In Thousands

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coin

\$4,389,492

Interest-bearing balances

3,288,212

Securities:

Held-to-maturity securities

654,763

Available-for-sale securities

17,626,360

Federal funds sold in domestic offices

1,759,600

Securities purchased under agreements to resell

911,600

Loans and lease financing receivables:

Loans and leases held for sale

724,074

Loans and leases, net of unearned income.....32,368,718

LESS: Allowance for loan and lease losses.....826,505

Loans and leases, net of unearned income and allowance.....31,542,213

Trading Assets

7,527,662

Premises and fixed assets (including capitalized leases)

825,706

Other real estate owned

164

Investments in unconsolidated subsidiaries and associated companies

260,940

Customers' liability to this bank on acceptances outstanding

225,935

Intangible assets

Goodwill

2,027,675

Other intangible assets

75,330

Other assets

4,843,295

- - - - -

Total assets

\$76,683,021

=====

**LIABILITIES**

## Deposits:

In domestic offices	\$33,212,852
---------------------	--------------

Noninterest-bearing.....	12,997,086
--------------------------	------------

Interest-bearing.....	20,215,766
-----------------------	------------

In foreign offices, Edge and Agreement subsidiaries, and IBFs	24,210,507
--	------------

Noninterest-bearing.....	595,520
--------------------------	---------

Interest-bearing.....	23,614,987
-----------------------	------------

Federal funds purchased in domestic offices	375,322
---	---------

Securities sold under agreements to repurchase	246,755
--	---------

Trading liabilities	2,335,466
---------------------	-----------

Other borrowed money: (includes mortgage indebtedness and obligations under capitalized leases)	959,997
---	---------

Bank's liability on acceptances executed and outstanding	227,253
---	---------

Subordinated notes and debentures	2,090,000
-----------------------------------	-----------

Other liabilities	5,716,796
-------------------	-----------

Total liabilities	\$69,374,948
-------------------	--------------

=====

Minority interest in consolidated subsidiaries	540,772
--	---------

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus	0
---	---

Common stock	1,135,284
--------------	-----------

Surplus	1,056,295
---------	-----------

Retained earnings	4,463,720
-------------------	-----------



Accumulated other comprehensive income	(112,002)
Other equity capital components	0
Total equity capital	6,767,301 - - - - -
Total liabilities minority interest and equity capital	<u>\$76,683,021</u> =====

---

I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,  
Senior Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi)  
Gerald L. Hassell)  
Alan R. Griffith )

Directors

## FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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)

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York (State of incorporation if not a U.S. national bank)	13-5160382 (I.R.S. employer identification no.)
One Wall Street, New York, N.Y. (Address of principal executive offices)	10286 (Zip code)

KCPL FINANCING II  
(Exact name of obligor as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	43-1764671 (I.R.S. employer identification no.)
1201 Walnut Kansas City, Missouri (Address of principal executive offices)	64106-2124 (Zip code)

Trust Preferred Securities  
(Title of the indenture securities)

**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.**

Name	Address
Superintendent of Banks of the State of New York	2 Rector Street, New York, N.Y. 10006, and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

**Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).**

1. A copy of the Organization Certificate of The Bank of New York (formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672 and Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637.)

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6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

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7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

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SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 22nd day of August, 2003.

THE BANK OF NEW YORK

By: /S/ MARY LAGUMINA

Name: MARY LAGUMINA

Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business March 31, 2003, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar Amounts  
In Thousands

**ASSETS**

Cash and balances due from depository  
institutions:

Noninterest-bearing balances and currency and coin	\$4,389,492
Interest-bearing balances	3,288,212
Securities:	
Held-to-maturity securities	654,763
Available-for-sale securities	17,626,360
Federal funds sold in domestic offices	1,759,600
Securities purchased under agreements to resell	911,600
Loans and lease financing receivables:	
Loans and leases held for sale	724,074
Loans and leases, net of unearned income.....	32,368,718
LESS: Allowance for loan and lease losses.....	826,505
Loans and leases, net of unearned income and allowance.....	31,542,213
Trading Assets	7,527,662
Premises and fixed assets (including capitalized leases)	825,706
Other real estate owned	164
Investments in unconsolidated subsidiaries and associated companies	260,940
Customers' liability to this bank on acceptances outstanding	225,935
Intangible assets	
Goodwill	2,027,675
Other intangible assets	75,330
Other assets	4,843,295
	-----
Total assets	<u>\$76,683,021</u> =====

## LIABILITIES

### Deposits:

In domestic offices \$33,212,852

Noninterest-bearing.....12,997,086

Interest-bearing.....20,215,766

In foreign offices, Edge and Agreement subsidiaries, and IBFs 24,210,507

Noninterest-bearing.....595,520

Interest-bearing.....23,614,987

Federal funds purchased in domestic offices 375,322

Securities sold under agreements to repurchase 246,755

Trading liabilities 2,335,466

Other borrowed money:  
(includes mortgage indebtedness and obligations under capitalized leases) 959,997

Bank's liability on acceptances executed and outstanding 227,253

Subordinated notes and debentures 2,090,000

Other liabilities 5,716,796  
- - - - -

Total liabilities \$69,374,948  
=====

Minority interest in consolidated subsidiaries 540,772

## EQUITY CAPITAL

Perpetual preferred stock and related surplus 0

Common stock 1,135,284

Surplus 1,056,295

Retained earnings 4,463,720

Accumulated other comprehensive income (112,002)

Other equity capital components 0

Total equity capital	6,767,301 -----
Total liabilities minority interest and equity capital	\$76,683,021 =====

---

I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,  
Senior Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi)  
Gerald L. Hassell)  
Alan R. Griffith )

Directors

-

## FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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)

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York (State of incorporation if not a U.S. national bank)	13-5160382 (I.R.S. employer identification no.)
One Wall Street, New York, N.Y. (Address of principal executive offices)	10286 (Zip code)

KANSAS CITY POWER & LIGHT COMPANY  
(Exact name of obligor as specified in its charter)

Missouri (State or other jurisdiction of incorporation or organization)	44-0308720 (I.R.S. employer identification no.)
1201 Walnut Kansas City, Missouri (Address of principal executive offices)	64106-2124 (Zip code)

Guarantee of Trust Preferred Securities of KCPL Financing II  
(Title of the indenture securities)

**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.**

Name	Address
Superintendent of Banks of the State of New York	2 Rector Street, New York, N.Y. 10006, and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

**Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).**

1. A copy of the Organization Certificate of The Bank of New York (formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672 and Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637.)

4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)

6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

---

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

---

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 22nd day of August, 2003.

THE BANK OF NEW YORK

By: /S/ MARY LAGUMINA

Name: MARY LAGUMINA

Title: VICE PRESIDENT

---

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business March 31, 2003, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar Amounts  
In Thousands

**ASSETS**

Cash and balances due from depository  
institutions:



Noninterest-bearing balances and currency and coin	\$4,389,492
Interest-bearing balances	3,288,212
Securities:	
Held-to-maturity securities	654,763
Available-for-sale securities	17,626,360
Federal funds sold in domestic offices	1,759,600
Securities purchased under agreements to resell	911,600
Loans and lease financing receivables:	
Loans and leases held for sale	724,074
Loans and leases, net of unearned income.....32,368,718	
LESS: Allowance for loan and lease losses.....826,505	
Loans and leases, net of unearned income and allowance.....31,542,213	
Trading Assets	7,527,662
Premises and fixed assets (including capitalized leases)	825,706
Other real estate owned	164
Investments in unconsolidated subsidiaries and associated companies	260,940
Customers' liability to this bank on acceptances outstanding	225,935
Intangible assets	
Goodwill	2,027,675
Other intangible assets	75,330
Other assets	4,843,295
	- - - - -
Total assets	\$76,683,021
	=====

## LIABILITIES

### Deposits:

In domestic offices \$33,212,852

Noninterest-bearing.....12,997,086

Interest-bearing.....20,215,766

In foreign offices, Edge and Agreement subsidiaries, and IBFs 24,210,507

Noninterest-bearing.....595,520

Interest-bearing.....23,614,987

Federal funds purchased in domestic offices 375,322

Securities sold under agreements to repurchase 246,755

Trading liabilities 2,335,466

Other borrowed money:  
(includes mortgage indebtedness and obligations under capitalized leases) 959,997

Bank's liability on acceptances executed and outstanding 227,253

Subordinated notes and debentures 2,090,000

Other liabilities 5,716,796  
- - - - -

Total liabilities \$69,374,948  
=====

Minority interest in consolidated subsidiaries 540,772

## EQUITY CAPITAL

Perpetual preferred stock and related surplus 0

Common stock 1,135,284

Surplus 1,056,295

Retained earnings 4,463,720

Accumulated other comprehensive income (112,002)

Other equity capital components 0

Total equity capital	6,767,301 -----
Total liabilities minority interest and equity capital	\$76,683,021 =====

---

I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,  
Senior Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi)  
Gerald L. Hassell)  
Alan R. Griffith )

Directors

## FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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)

---

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York (State of incorporation if not a U.S. national bank)	13-5160382 (I.R.S. employer identification no.)
One Wall Street, New York, N.Y. (Address of principal executive offices)	10286 (Zip code)

---

KCPL FINANCING III  
(Exact name of obligor as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	43-1764672 (I.R.S. employer identification no.)
1201 Walnut Kansas City, Missouri (Address of principal executive offices)	64106-2124 (Zip code)

---

Trust Preferred Securities  
(Title of the indenture securities)

---

**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.**

Name	Address
Superintendent of Banks of the State of New York	2 Rector Street, New York, N.Y. 10006, and Albany, N.Y. 12203
Federal Reserve Bank of New York	33 Liberty Plaza, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

**Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).**

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4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 33-31019.)

6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with Registration Statement No. 33-44051.)

---

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

---

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 22nd day of August, 2003.

THE BANK OF NEW YORK

By: /S/ MARY LAGUMINA  
Name: MARY LAGUMINA  
Title: VICE PRESIDENT

---

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business March 31, 2003, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

Dollar Amounts  
In Thousands

**ASSETS**

Cash and balances due from depository

institutions:

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Loans and leases, net of unearned income.....32,368,718

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Trading Assets

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Other real estate owned

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Investments in unconsolidated subsidiaries and associated companies

260,940

Customers' liability to this bank on acceptances outstanding

225,935

Intangible assets

Goodwill

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Other intangible assets

75,330

Other assets

4,843,295

- - - - -

Total assets

\$76,683,021

---

**LIABILITIES**

## Deposits:

In domestic offices \$33,212,852

Noninterest-bearing.....12,997,086

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Trading liabilities 2,335,466

Other borrowed money:  
(includes mortgage indebtedness and obligations  
under capitalized leases) 959,997

Bank's liability on acceptances executed and  
outstanding 227,253

Subordinated notes and debentures 2,090,000

Other liabilities 5,716,796

Total liabilities \$69,374,948

Minority interest in consolidated subsidiaries 540,772

**EQUITY CAPITAL**

Perpetual preferred stock and related surplus 0

Common stock 1,135,284

Surplus 1,056,295

Retained earnings 4,463,720

Accumulated other comprehensive income (112,002)

Other equity capital components	0
Total equity capital	6,767,301 -----
Total liabilities minority interest and equity capital	\$76,683,021 =====

---

I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,  
Senior Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi)  
Gerald L. Hassell)  
Alan R. Griffith )

Directors



## FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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)

THE BANK OF NEW YORK

(Exact name of trustee as specified in its charter)

New York (State of incorporation if not a U.S. national bank)	13-5160382 (I.R.S. employer identification no.)
One Wall Street, New York, N.Y. (Address of principal executive offices)	10286 (Zip code)

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(Exact name of obligor as specified in its charter)

Missouri (State or other jurisdiction of incorporation or organization)	44-0308720 (I.R.S. employer identification no.)
1201 Walnut Kansas City, Missouri (Address of principal executive offices)	64106-2124 (Zip code)

Guarantee of Trust Preferred Securities of KCPL Financing III  
(Title of the indenture securities)

**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.**

Name	Address
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Federal Deposit Insurance Corporation	Washington, D.C. 20429

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

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7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

---

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 22nd day of August, 2003.

THE BANK OF NEW YORK

By: /S/ MARY LAGUMINA

Name: MARY LAGUMINA

Title: VICE PRESIDENT

EXHIBIT 7

Consolidated Report of Condition of

THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

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Trading Assets	7,527,662
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Other intangible assets	75,330
Other assets	4,843,295
	-----
Total assets	<u>\$76,683,021</u> =====

## LIABILITIES

### Deposits:

In domestic offices \$33,212,852

Noninterest-bearing.....12,997,086

Interest-bearing.....20,215,766

In foreign offices, Edge and Agreement subsidiaries, and IBFs 24,210,507

Noninterest-bearing.....595,520

Interest-bearing.....23,614,987

Federal funds purchased in domestic offices 375,322

Securities sold under agreements to repurchase 246,755

Trading liabilities 2,335,466

Other borrowed money:  
(includes mortgage indebtedness and obligations under capitalized leases) 959,997

Bank's liability on acceptances executed and outstanding 227,253

Subordinated notes and debentures 2,090,000

Other liabilities 5,716,796  
- - - - -

Total liabilities \$69,374,948  
=====

Minority interest in consolidated subsidiaries 540,772

## EQUITY CAPITAL

Perpetual preferred stock and related surplus 0

Common stock 1,135,284

Surplus 1,056,295

Retained earnings 4,463,720

Accumulated other comprehensive income (112,002)

Other equity capital components 0

Total equity capital	6,767,301 -----
Total liabilities minority interest and equity capital	\$76,683,021 =====

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I, Thomas J. Mastro, Senior Vice President and Comptroller of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas J. Mastro,  
Senior Vice President and Comptroller

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Thomas A. Renyi)  
Gerald L. Hassell)  
Alan R. Griffith )

Directors