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April 10, 2008

**Via Federal Express**

Ms. Stephanie Stumbo  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

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APR 11 2008

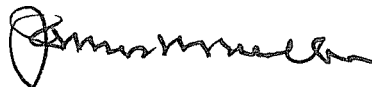
**PUBLIC SERVICE  
COMMISSION**

Re: The Applications of Big Rivers Electric Corporation for: (I) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (II) Approval of Transactions, (III) Approval to Issue Evidences of Indebtedness, and (IV) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc., for Approval of Transactions, PSC Case No. 2007-00455

Dear Ms. Stumbo:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of (i) a Motion to Amend and Supplement Application, and (ii) a Second Amendment and Supplement to Application ("Second Amendment") seeking approval for Big Rivers to issue evidences of indebtedness. A copy of this cover letter, the motion, and the Second Amendment has been served on the attached service list.

Sincerely yours,



James M. Miller

JMM/ej  
Enclosures

cc: Michael H. Core  
David Spainhoward  
Service List

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PSC CASE NO. 2007-00455

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PSC CASE NO. 2007-00455

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESale TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC )  
CORPORATION, (II) APPROVAL OF )  
TRANSACTIONS, (III) APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS, AND )  
(IV) APPROVAL OF AMENDMENTS TO )  
CONTRACTS; AND )  
)  
)  
OF E.ON U.S., LLC, WESTERN KENTUCKY )  
ENERGY CORP. AND LG&E ENERGY MARKETING,) )  
INC. FOR APPROVAL OF TRANSACTIONS )

CASE NO. 2007-00455

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COMMISSION

**MOTION TO AMEND AND SUPPLEMENT APPLICATION**

Big Rivers Electric Corporation ("Big Rivers") moves the Public Service Commission ("Commission") pursuant to 807 KAR 5:001 Section 3(5), for an order allowing it to amend and supplement the application in this matter (the "Application") to seek the Commission's approval for Big Rivers to file the "Second Amendment and Supplement to Application," attached hereto ("Second Amendment"), which seeks approval for Big Rivers to issue certain evidences of indebtedness.

The Application contemplated that Big Rivers would subsequently file its request for approval to issue evidences of indebtedness. Big Rivers filed a previous Motion to Amend and Supplement Application on or about March 31, 2008, in which it sought leave to amend the Application to include details and evidence in support of its request for approval to issue evidences of



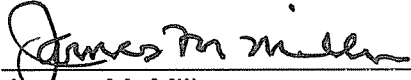
1 indebtedness (the "First Amendment"). Application ¶¶ 65-67. The First  
2 Amendment explained the necessity of making staggered filings of the financing  
3 documents as they become substantially complete (First Amendment ¶ 16), and  
4 contained the information required for a filing seeking approval to issue the  
5 proposed evidences of indebtedness. This motion seeks to add additional  
6 documents and descriptions of documents to that request.

7 Big Rivers submits that it is both reasonable and appropriate that the  
8 Commission exercise its discretion to allow the amendment and supplementation  
9 of the Application proposed by Big Rivers, for the reasons stated in the motion  
10 seeking to file the First Amendment. The Second Amendment contains part of  
11 the information required to complete the filing of the financing document that  
12 began with the First Amendment.

13 WHEREFORE, Big Rivers requests that the Commission enter its order  
14 allowing Big Rivers to amend and supplement its Application with the Second  
15 Amendment, attached to this motion, and granting all other relief to which Big  
16 Rivers may appear entitled.

17 On this the 10th day of April, 2008.

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COUNSEL FOR BIG RIVERS  
ELECTRIC CORPORATION

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC )  
CORPORATION, (II) APPROVAL OF )  
TRANSACTIONS, (III) APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS, AND )  
(IV) APPROVAL OF AMENDMENTS TO )  
CONTRACTS; AND )  
)  
OF E.ON U.S., LLC, WESTERN KENTUCKY )  
ENERGY CORP. AND LG&E ENERGY MARKETING )  
INC. FOR APPROVAL OF TRANSACTIONS )

CASE NO. 2007-00455

**SECOND AMENDMENT AND SUPPLEMENT TO APPLICATION**

Big Rivers Electric Corporation ("Big Rivers") amends and supplements the portion of its application in this matter ("Application") that seeks approval to issue additional evidences of indebtedness in conjunction with the transaction proposed in this proceeding (the "Unwind Transaction") with this Second Amendment and Supplement to Application, hereinafter referred to as the "Second Amendment."

On or about March 31, 2008, Big Rivers filed a motion for leave to file a First Amendment and Supplement to Application (the "First Amendment"), which motion is pending before the Commission. In the First Amendment, Big Rivers supported approval of certain evidences of indebtedness and provided a description of the balance of the overall financing plan Big Rivers proposes to implement in the period beginning with the closing of the Unwind Transaction.

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1 Big Rivers also noted that the financial transaction documents not filed in the  
2 First Amendment would be filed as they become available. This Second  
3 Amendment adds to Big Rivers' financing filing certain of the remaining financing  
4 transaction documents for which Commission approval is required, and other  
5 documents related to Big Rivers' overall financing plan, which Big Rivers believes  
6 do not require Commission approval. Big Rivers believes these documents are  
7 in substantially complete form. Exhibits attached to this Second Amendment are  
8 numbered beginning with Exhibit 49, to continue the exhibit numbering scheme  
9 used in the Application and the First Amendment.

10

11 **PURPOSES AND DESCRIPTIONS OF EVIDENCES OF INDEBTEDNESS**  
12 **FILED WITH THIS SECOND AMENDMENT, FOR WHICH COMMISSION**  
13 **APPROVAL IS SOUGHT**  
14

15 1. Big Rivers seeks approval to enter into the **Indenture** between Big  
16 Rivers Electric Corporation, Grantor to the Indenture trustee, which will be named  
17 later ("Trustee"). The Indenture is attached hereto as Exhibit 49. The Indenture  
18 is a new security instrument that will be substituted for the existing Third  
19 Restated Mortgage<sup>1</sup> ("Third Restated Mortgage"), and will involve different  
20 concepts from those in the Third Restated Mortgage. A principal feature of the  
21 Indenture is the use of a lien and security interest in favor of an institutional  
22 trustee rather than in favor of each individual creditor as mortgagee. Like the

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<sup>1</sup> Third Amended and Restated Mortgage and Security Agreement Dated as of August 1, 2001, made by and among Big Rivers Electric Corporation; The United States of America, acting through the Administrator of the Rural Utilities Service; Ambac Assurance Corporation; National Rural Utilities Cooperative Finance Corporation; Dexia Credit Local, New York Branch; U.S. Bank Trust National Association, as trustee under the Trust Indenture dated as of August 1, 2001; PBR-1 Statutory Trust; PBR-2 Statutory Trust; PBR-3 Statutory Trust; FBR-1 Statutory Trust; FBR-2 Statutory Trust; and Ambac Credit Products, LLC. See Application, Appendix A.

1 Third Restated Mortgage, the Indenture creates a lien and security interest on  
2 most of Big Rivers' real and personal property. However, there are exceptions  
3 from the property covered by the lien and security interest of the Indenture. Most  
4 notably, cash, most contracts (other than those relating to the ownership or  
5 operation of jointly-owned facilities and significant power purchase agreements)  
6 and stock in any subsidiaries are not subject to the lien and security interest.  
7 These modest, but significant, differences in the property subject to the lien and  
8 security interest of the Indenture will provide Big Rivers with additional operating  
9 and financial flexibility.

10       2. Unlike the Third Restated Mortgage, the Indenture will permit Big  
11 Rivers to issue additional debt secured by the Indenture on a *pari passu* basis  
12 with Big Rivers' existing senior secured creditors without obtaining their approval.  
13 Under the Third Restated Mortgage, Big Rivers is subject to the oversight of its  
14 senior secured creditors. Because any one of them can decide not to approve  
15 an issuance of additional debt, Big Rivers is greatly hampered in its ability to  
16 meet any future capital requirements as simply and easily as it can under the  
17 Indenture.

18       3. The tests under the Indenture for issuing additional secured debt  
19 require that the additional debt be supported by, among other things, either (i) the  
20 existence of capital improvements to Big Rivers' electric system (including work  
21 in progress) resulting in "bondable additions"; (ii) the retirement or defeasance of,  
22 or principal payments under, outstanding debt secured by the Indenture; or (iii)  
23 cash deposited with the Trustee. In addition, no additional debt issued on a *pari*

1 *passu* basis may be made absent the delivery of certain certificates and opinions  
2 of counsel. The Indenture will secure all of the indebtedness owed to Big Rivers'  
3 existing senior secured creditors as well as future senior secured creditors of Big  
4 Rivers on a *pro rata, pari passu* basis.

5 4. The covenants in the Indenture differ from those in the Third  
6 Restated Mortgage, as noted above, in that they do not vest in creditors  
7 pervasive control over Big Rivers' operations to the extent of those in the Third  
8 Restated Mortgage. Some of the covenants are similar, however. Both the  
9 Indenture and the Third Restated Mortgage have covenants dealing with things  
10 such as (a) the existence of liens on the property concerned; (b) maintaining and  
11 insuring the property concerned; (c) keeping appropriate books and records  
12 relating to Big Rivers' plant, properties and business; (d) distributions to Big  
13 Rivers' members; and (e) the investment of surplus cash. The Indenture  
14 covenants differ in that they include a covenant concerning establishing and  
15 collecting rates for electric service, as opposed to the Third Restated Mortgage's  
16 covenant addressing only rate design. In general tenor, however, the covenants  
17 in the Indenture will permit Big Rivers greater flexibility in the manner in which it  
18 can operate without need for frequent creditor consents which have proven  
19 cumbersome and time consuming in the past.

20 5. In general, the Indenture is structured much more flexibly to permit  
21 modifications without the need to consult minority holders. The Indenture will  
22 permit supplements without the consent of the holders of Indenture obligations  
23 for a variety of actions which are either ministerial or otherwise not deemed

1 contrary to the interests of the obligation holders under the Indenture. Other  
2 supplements to the Indenture will require the approval of the holders of a majority  
3 of the principal amounts of the outstanding obligations of any series of  
4 obligations issued under the Indenture which are affected by that supplement.  
5 Certain fundamental changes in Indenture provisions will require the consent of  
6 each holder of an obligation affected by the supplement, but these circumstances  
7 are strictly limited. The provisions of the Indenture dealing with supplements,  
8 thus, will substantially diminish the ability of a minority obligation holder or  
9 holders to extract concessions from Big Rivers in return for their agreement to  
10 modifications to the Indenture which Big Rivers feels are necessary over the long  
11 term. This is a significant benefit for Big Rivers.

12 6. Big Rivers seeks approval to enter into the **Facility Lessor (D)**  
13 **Secured Note (PBR-1)**, the **Facility Lessor (D) Secured Note (PBR-2)**, and the  
14 **Facility Lessor (D) Secured Note (PBR-3)** (the "Facility Lessor (D) Secured  
15 Notes"), each of which is from Big Rivers Electric Corporation to the respective  
16 statutory trust. The Facility Lessor (D) Secured Notes are identical except as to  
17 the identity of the statutory trust (e.g., PBR-1, PBR-2, or PBR-3) to which they  
18 are applicable. For this reason, Big Rivers attaches only the Facility Lessor (D)  
19 Secured Note (PBR-1) as Exhibit 50 to this Second Amendment as  
20 representative of all three Facility Lessor (D) Secured Notes.

21 7. Big Rivers seeks approval to enter into the **Facility Lessor (E)**  
22 **Secured Note (PBR-1)**, the **Facility Lessor (E) Secured Note (PBR-2)**, and the  
23 **Facility Lessor (E) Secured Note (PBR-3)** (the "Facility Lessor (E) Secured

1 Notes”), each of which is from Big Rivers Electric Corporation to the respective  
2 statutory trust. The Facility Lessor (E) Secured Notes are identical except as to  
3 the identity of the statutory trust (e.g., PBR-1, PBR-2, or PBR-3) to which they  
4 are applicable. For this reason, Big Rivers attaches only the Facility Lessor (E)  
5 Secured Note (PBR-1) as Exhibit 51 to this Second Amendment as  
6 representative of all three Facility Lessor (E) Secured Notes.

7 8. The Facility Lessor (D) Secured Notes and the Facility Lessor (E)  
8 Secured Notes are notes from Big Rivers to certain statutory trusts that will  
9 replace notes to those trusts issued and approved in connection with the  
10 Leveraged Lease<sup>2</sup>, that are secured by the Third Restated Mortgage. The terms,  
11 amounts, and interest rates set forth in these notes are essentially the same as  
12 the notes that they replace, except that the new notes are secured by the  
13 Indenture, rather than the Third Restated Mortgage.

14 9. Big Rivers seeks approval to enter into the **Ambac Credit**  
15 **Products Secured Note (PBR-1)**, the **Ambac Credit Products Secured Note**  
16 **(PBR-2)**, and the **Ambac Credit Products Secured Note (PBR-3)** (the “Ambac  
17 Credit Products Secured Notes”), each from Big Rivers Electric Corporation to  
18 Ambac Credit Products, LLC. The Ambac Credit Products Secured Notes are  
19 identical except as to the identity of the statutory trust (e.g., PBR-1, PBR-2, or  
20 PBR-3) to which they are applicable. For this reason, Big Rivers attaches only  
21 the Ambac Credit Products Secured Note (PBR-1) as Exhibit 52 to this Second  
22 Amendment as representative of all three Ambac Swap Notes. The Ambac

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<sup>2</sup> *In the Matter of: Big Rivers Electric Corporation’s Application for Approval of a Leveraged Lease of Three Generating Units*, P.S.C. Case No. 99-450.



1 Credit Products Secured Notes will replace notes issued and approved in the  
2 Leveraged Lease that are secured by the Third Restated Mortgage. The terms,  
3 amounts, and interest rates are set forth in the Ambac Credit Products Secured  
4 Notes are essentially the same as the notes that they replace, except that the  
5 new notes are secured by the Indenture, whereas the old notes are secured by  
6 the Third Restated Mortgage.

7 10. Big Rivers seeks approval to enter into the **PCB Series 2001A**  
8 **Note**, from Big Rivers Electric Corporation to the County of Ohio, Kentucky,  
9 attached hereto as Exhibit 53. This note will replace an existing note to the  
10 County of Ohio, Kentucky (the "County"), that was issued in consideration of the  
11 County's issuance of certain pollution control bonds. The terms, amount, and  
12 interest rate are set forth in the note, and are essentially the same as the note  
13 that it replaces, except that the new note is secured by the Indenture, whereas  
14 the old note is secured by the Third Restated Mortgage.

15 11. Big Rivers seeks approval to enter into the **Ambac Municipal**  
16 **Bond Insurance Policy Series 1983 Note**, from Big Rivers Electric Corporation  
17 to Ambac Assurance Corporation, attached hereto as Exhibit 54. This note  
18 replaces an existing note issued and approved in connection with the Leveraged  
19 Lease for the repayment of any amounts Ambac Assurance Corporation  
20 ("Ambac") must pay under an agreement by which Ambac guaranteed the  
21 repayment of certain pollution control bonds issued by the County. The terms,  
22 amount, and interest rate are set forth in the note, and are essentially the same

1 as the note that it replaces, except that the new note is secured by the Indenture,  
2 whereas the old note is secured by the Third Restated Mortgage.

3 12. Big Rivers seeks approval to enter into the **Standby Bond**  
4 **Purchase Agreement Note (Series 1983 Bonds)**, from Big Rivers Electric  
5 Corporation to Dexia Credit Local, attached hereto as Exhibit 55. This note  
6 replaces an existing note to Dexia Credit Local ("Dexia") issued and approved in  
7 connection with the Leveraged Lease for the repayment of unpaid principal and  
8 interest when due on certain pollution control bonds issued by the County and  
9 purchased and held by Dexia. The terms, amount, and interest rate are set forth  
10 in the note, and are essentially the same as the note that it replaces, except that  
11 the new note is secured by the Indenture, whereas the old note is secured by the  
12 Third Restated Mortgage.

13 13. Big Rivers seeks approval to enter into the **Termination of Third**  
14 **Amended and Restated Subordination, Nondisturbance, Attornment and**  
15 **Intercreditor Agreement** among (a) Big Rivers Electric Corporation; (b) LG&E  
16 Energy Marketing Inc., and Western Kentucky Energy Corp.; (c) The United  
17 States of America, acting through the Administrator of the Rural Utilities Service;  
18 (d) Ambac Assurance Corporation; (e) National Rural Utilities Cooperative  
19 Finance Corporation; (e) Dexia Credit Local, New York Branch; (f) U.S. Bank  
20 Trust National Association, as trustee under the Trust Indenture dated as of  
21 August 1, 2001 (g) PBR-1 Statutory Trust; (h) PBR-2 Statutory Trust; (i) PBR-3  
22 Statutory Trust; (j) FBR-1 Statutory Trust; (k) FBR-2 Statutory Trust; (l) PBR-1  
23 OP Statutory Trust; (m) PBR-2 OP Statutory Trust; (n) PBR-3 OP Statutory Trust;

1 (o) FBR-1 OP Statutory Trust; (p) FBR-2 OP Statutory Trust; (q) Bluegrass  
2 Leasing; (r) Bank of America Leasing Corporation; (s) AME Investments, LLC; (t)  
3 CoBank, ACB; and (u) Ambac Credit Products, LLC, attached hereto as Exhibit  
4 56. This agreement is a short-form document for recording that is intended to  
5 facilitate the termination and release of the existing Intercreditor Agreement<sup>3</sup> on  
6 file in various counties of the Commonwealth of Kentucky pursuant to the  
7 Creditor Consent, Termination and Release Agreement, which is still being  
8 negotiated, and has not yet been filed with the Commission.

9 14. Big Rivers seeks approval to enter into the **Termination of Third**  
10 **Restated Mortgage and Security Agreement**, among (a) Big Rivers Electric  
11 Corporation; (b) The United States of America, acting through the Administrator  
12 of the Rural Utilities Service; (d) Ambac Assurance Corporation; (e) National  
13 Rural Utilities Cooperative Finance Corporation; (e) Dexia Credit Local, New  
14 York Branch; (f) U.S. Bank Trust National Association, as trustee under the Trust  
15 Indenture dated as of August 1, 2001 (g) PBR-1 Statutory Trust; (h) PBR-2  
16 Statutory Trust; (i) PBR-3 Statutory Trust; (j) FBR-1 Statutory Trust; (k) FBR-2  
17 Statutory Trust; and (v) Ambac Credit Products, LLC, attached hereto as Exhibit  
18 57. This agreement is intended to facilitate the termination and release of the  
19 existing Third Restated Mortgage on file in various counties of the  
20 Commonwealth of Kentucky pursuant to the Creditor Consent, Termination and

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<sup>3</sup> Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement Dated as of August 1, 2001, among Big Rivers Electric Corporation; The United States of American, acting through the Administrator of the Rural Utilities Service; Ambac Assurance Corporation; PBR-1 Statutory Trust; PBR-2 Statutory Trust; PBR-3 Statutory Trust; FBR-1 Statutory Trust; FBR-2 Statutory Trust; PBR-1 OP Statutory Trust; PBR-2 OP Statutory Trust; PBR-3 OP Statutory Trust; FBR-1 OP Statutory Trust; FBR-2 OP Statutory Trust; Bluegrass Leasing; Bank of America Leasing Corporation; AME Investments, LLC; CoBank, ACB; AME Asset Funding, LLC; and Ambac Credit Products, LLC, as amended by a First Amendment Dated as of August 22, 2002. See Application, Appendix A.

1 Release Agreement, which is still being negotiated, and has not yet been filed  
2 with the Commission.

3 15. Big Rivers seeks approval to enter into the **Amended and**  
4 **Restated Stock Pledge Agreement**, made by Big Rivers Electric Corporation,  
5 as Pledgor, in favor of US Bank National Association, as Collateral Agent, as  
6 Pledgee, for the benefit of Ambac Credit Products, LLC, PBR-1 Statutory trust,  
7 PBR-2 Statutory trust, PBR-3 Statutory trust, FBR-1 Statutory trust, FBR-2  
8 Statutory trust, in each case acting through U.S. Bank National Association, not  
9 in its individual capacity, but solely as the respective Trustee, and  
10 [\_\_\_\_\_], as the Indenture Trustee, as the respective Secured  
11 Parties, and Ambac Assurance Corporation, attached hereto as Exhibit 58. This  
12 agreement recognizes that the collateral subject to the security interest created  
13 thereby consists of membership interests in a Delaware limited liability company  
14 rather than stock in a corporation, and confirms the security interest in these  
15 membership interests in favor of certain parties to the Leveraged Lease.

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17 **PURPOSES AND DESCRIPTIONS OF EVIDENCES OF INDEBTEDNESS**  
18 **FILED WITH THIS SECOND AMENDMENT, FOR WHICH COMMISSION**  
19 **APPROVAL IS NOT SOUGHT**

20

21 16. The documents described below will also be entered into as part of  
22 its overall financing arrangements in connection with the Unwind Transaction.  
23 Big Rivers does not believe Commission approval is required for the documents  
24 identified in the paragraphs that follow.

1           17.    **Amended and Restated Funding Agreement Pledge Agreement**  
2   **(PBR-1), Amended and Restated Funding Agreement Pledge Agreement**  
3   **(PBR-2) and Amended and Restated Funding Agreement Pledge Agreement**  
4   **(PBR-3)** (the "Amended and Restated Funding Agreement Pledge Agreements"),  
5 each among Big Rivers Leasing, LLC, Ambac Credit Products, LLC and  
6 [\_\_\_\_\_], as Indenture Trustee. The Amended and  
7 Restated Funding Agreement Pledge Agreements are identical except as to the  
8 identity of the statutory trust (e.g., PBR-1, PBR-2, or PBR-3) to which they are  
9 applicable. For this reason, Big Rivers attaches only the Amended and Restated  
10 Funding Agreement Pledge Agreement (PBR-1) as Exhibit 59 to this Second  
11 Amendment as representative of all three agreements. These pledge  
12 agreements will be executed by Big Rivers' subsidiary Big Rivers Leasing LLC  
13 (successor to Big Rivers Leasing Corporation). They will create a subordinated  
14 security interest in favor of the Indenture Trustee in the collateral subject to such  
15 pledge agreements, confirm the existing security interests in favor of Ambac  
16 Credit Products and the statutory trusts in the collateral subject to such pledge  
17 agreements, and otherwise reflect the provisions of the existing pledge  
18 agreements. Big Rivers Leasing LLC is a party to these agreements, but Big  
19 Rivers is not a party.

20           18.    **Amended and Restated Payment Agreement Pledge**  
21 **Agreement (PBR-1), Amended and Restated Payment Agreement Pledge**  
22 **Agreement (PBR-2) and Amended and Restated Payment Agreement**  
23 **Pledge Agreement (PBR-3)** (the "Amended and Restated Payment Agreement

1 Pledge Agreements”) among Big Rivers Leasing LLC, the respective Statutory  
2 Trust, acting through U.S. Bank National Association, not in its individual  
3 capacity, but solely as Trustee, Ambac Credit Products, LLC, and  
4 [\_\_\_\_\_], as Indenture Trustee. The Amended and Restated  
5 Payment Agreement Pledge Agreements are identical except as to the identity of  
6 the statutory trust (e.g., PBR-1, PBR-2, or PBR-3) to which they are applicable.  
7 For this reason, Big Rivers attaches only the Amended and Restated Payment  
8 Agreement Pledge Agreement (PBR-1) as Exhibit 60 to this Second Amendment  
9 as representative of all three agreements. These pledge agreements will be  
10 executed by Big Rivers’ subsidiary Big Rivers Leasing LLC (successor to Big  
11 Rivers Leasing Corporation). They will create a subordinated security interest in  
12 favor of the Indenture Trustee in the collateral subject to such pledge  
13 agreements, confirm the existing security interests in favor of Ambac Credit  
14 Products and the statutory trusts in the collateral subject to such pledge  
15 agreements, and otherwise reflect the provisions of the existing pledge  
16 agreements. Big Rivers Leasing LLC is a party to these agreements, but Big  
17 Rivers is not a party.

18           19.     **Amended and Restated Government Securities Pledge**  
19 **Agreement (PBR-1), Amended and Restated Government Securities Pledge**  
20 **Agreement (PBR-2) and Amended and Restated Government Securities**  
21 **Pledge Agreement (PBR-3) (the “Amended and Restated Government**  
22 **Securities Pledge Agreements”) among Big Rivers Leasing LLC, Ambac Credit**  
23 **Products, LLC, [\_\_\_\_\_], as Indenture Trustee, the respective**

1 Statutory Trust, acting through U.S. Bank, National Association, not in its  
2 individual capacity but solely as trustee, and U.S. Bank, National Association, as  
3 Government Securities Collateral Agent and as Government Securities  
4 Intermediary. The Amended and Restated Government Securities Pledge  
5 Agreements are identical except as to the identity of the statutory trust (*e.g.*,  
6 PBR-1, PBR-2, or PBR-3) to which they are applicable. For this reason, Big  
7 Rivers attaches only the Amended and Restated Government Securities Pledge  
8 Agreement (PBR-1) as Exhibit 61 to this Second Amendment as representative  
9 of all three agreements. These agreements will be executed by Big Rivers'  
10 subsidiary Big Rivers Leasing LLC (successor to Big Rivers Leasing  
11 Corporation). They will create a subordinated security interest in favor of the  
12 Indenture Trustee in the collateral subject to such pledge agreements, confirm  
13 the existing security interests in favor of Ambac Credit Products and the statutory  
14 trusts in the collateral subject to such pledge agreements, and otherwise reflect  
15 the provisions of the existing pledge agreements. Big Rivers Leasing LLC is a  
16 party to these agreements, but Big Rivers is not a party.

17           20.     **Partial Termination of Funding Agreement Pledge Agreement**  
18 **(PBR-1), Partial Termination of Funding Agreement Pledge Agreement**  
19 **(PBR-2) and Partial Termination of Funding Agreement Pledge Agreement**  
20 **(PBR-3)** (the "Partial Termination of Funding Agreement Pledge Agreements") by  
21 and among Big Rivers Leasing LLC, The United States of America, acting  
22 through the Administrator of the Rural Utilities Service, National Rural Utilities  
23 Cooperative Finance Corporation, PBR-1 Statutory Trust, PBR-2 Statutory Trust,

1 PBR-3 Statutory Trust, Ambac Credit Products, LLC and Ambac Assurance  
2 Corporation. The Partial Termination of Funding Agreement Pledge Agreements  
3 are identical except as to the identity of the statutory trust (e.g., PBR-1, PBR-2,  
4 or PBR-3) to which they are applicable. For this reason, Big Rivers attaches only  
5 the Partial Termination of Funding Agreement Pledge Agreement (PBR-1) as  
6 Exhibit 62 to this Second Amendment as representative of all three agreements.  
7 Under these agreements, the mortgagees under the Third Restated Mortgage  
8 will release their subordinated security interests under the Funding Agreement  
9 Pledge, which was approved in connection with the Leveraged Lease. Big  
10 Rivers Leasing LLC is a party to these agreements, but Big Rivers is not a party.

11           21.    **Partial Termination of Payment Agreement Pledge Agreement**  
12 **(PBR-1), Partial Termination of Payment Agreement Pledge Agreement**  
13 **(PBR-2) and Partial Termination of Payment Agreement Pledge Agreement**  
14 **(PBR-3)** (the "Partial Termination of Payment Agreement Pledge Agreements")  
15 among Big Rivers Leasing LLC; The United States of America, acting through the  
16 Administrator of the Rural Utilities Service; National Rural Utilities Cooperative  
17 Finance Corporation; Ambac Assurance Corporation; PBR-1 Statutory Trust;  
18 PBR-2 Statutory Trust; PBR-3 Statutory Trust; and Ambac Credit Products, LLC.  
19 The Partial Termination of Payment Agreement Pledge Agreements are identical  
20 except as to the identity of the statutory trust (e.g., PBR-1, PBR-2, or PBR-3) to  
21 which they are applicable. For this reason, Big Rivers attaches only the Partial  
22 Termination of Payment Agreement Pledge Agreement (PBR-1) as Exhibit 63 to  
23 this Second Amendment as representative of all three agreements. Under these



1 agreements, the mortgagees under the Third Restated Mortgage will release  
2 their subordinated security interests under the Payment Agreement Pledge,  
3 which was approved in connection with the Leveraged Lease. Big Rivers  
4 Leasing LLC is a party to these agreements, but Big Rivers is not a party.

5       **22. Partial Termination of Government Securities Pledge**  
6 **Agreement (PBR-1), Partial Termination of Government Securities Pledge**  
7 **Agreement (PBR-2) and Partial Termination of Government Securities**  
8 **Pledge Agreement (PBR-3)** (the "Partial Termination of Government Securities  
9 Pledge Agreements") by and among Big Rivers Leasing, LLC, The United States  
10 of America acting through the Administrator of the Rural Utilities Service, National  
11 Rural Utilities Cooperative Finance Corporation, PBR-1 Statutory Trust, PBR-2  
12 Statutory Trust, PBR-3 Statutory Trust, Ambac Credit Products, LLC and Ambac  
13 Assurance Corporation. The Partial Termination of Government Securities  
14 Pledge Agreements are identical except as to the identity of the statutory trust  
15 (e.g., PBR-1, PBR-2, or PBR-3) to which they are applicable. For this reason,  
16 Big Rivers attaches only the Partial Termination of Government Securities  
17 Pledge Agreement (PBR-1) as Exhibit 64 to this Second Amendment as  
18 representative of all three agreements. Under these agreements, the  
19 mortgagees under the Third Restated Mortgage will release their subordinated  
20 security interests under the Government Securities Pledge, which was approved  
21 in connection with the Leveraged Lease. Big Rivers Leasing LLC is a party to  
22 these agreements, but Big Rivers is not a party.

1           23.    The credit arrangements created by the evidences of indebtedness  
2 described in this Second Amendment are necessary and appropriate for Big  
3 Rivers to perform its obligations to its Members and the public.

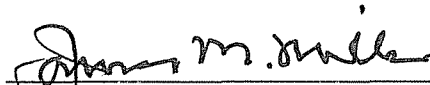
4           24.    If the Commission finds that a document listed by Big Rivers as not  
5 requiring Commission approval does require Commission approval before the  
6 document may be signed and issued by Big Rivers or an affiliate of Big Rivers,  
7 Big Rivers also asks that the Commission authorize Big Rivers or its affiliate to  
8 sign and issue that document.

9           WHEREFORE, Big Rivers respectfully requests that the Commission  
10 enter its order (i) authorizing issuance by Big Rivers of the agreements proposed  
11 for Commission approval in this Second Amendment, (ii) stating in general terms  
12 the purpose of the issuance of these evidences of indebtedness, (iii) finding that  
13 issuance of these evidences of indebtedness is for some lawful object within the  
14 corporate purposes of Big Rivers, is necessary or appropriate for or consistent  
15 with the proper performance by Big Rivers of its service to the public and will not  
16 impair its ability of Big Rivers to perform that service, (iv) is reasonably necessary  
17 and appropriate for that service, and (v) granting all other relief to which Big  
18 Rivers may appear entitled.

19           On this the 10th day of April, 2008.

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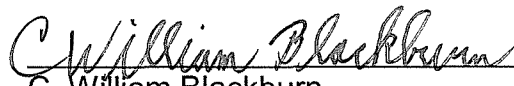
  
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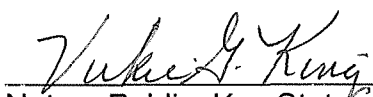
**Verification**

I, C. William Blackburn, Vice President and Chief Financial Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 10 day of April, 2008.

  
C. William Blackburn  
Vice President and Chief Financial Officer  
Big Rivers Electric Corporation

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by C. William Blackburn, as Vice President and Chief Financial Officer of Big Rivers Electric Corporation, on this the 10<sup>th</sup> day of April, 2008.

  
Notary Public, Ky., State at Large  
My commission expires: 03/03/2010



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### Documents for which Commission approval is sought

|            |   |
|------------|---|
| Exhibit 49 | Indenture   |
| Exhibit 50 | Facility Lessor (D) Secured Notes   |
| Exhibit 51 | Facility Lessor (E) Secured Notes   |
| Exhibit 52 | Ambac Credit Products Secured Notes   |
| Exhibit 53 | PCB Series 2001A Note   |
| Exhibit 54 | Ambac Municipal Bond Insurance Policy Series 1983 Note  |
| Exhibit 55 | Standby Bond Purchase Agreement Note (Series 1983 Bonds)  |
| Exhibit 56 | Termination of Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement |
| Exhibit 57 | Termination of Third Restated Mortgage and Security Agreement   |
| Exhibit 58 | Amended and Restated Stock Pledge Agreement   |

### Documents for which Commission approval is not sought

|            |  |
|------------|--|
| Exhibit 59 | Amended and Restated Funding Agreement Pledge Agreements       |
| Exhibit 60 | Amended and Restated Payment Agreement Pledge Agreements       |
| Exhibit 61 | Amended and Restated Government Securities Pledge Agreements   |
| Exhibit 62 | Partial Termination of Funding Agreement Pledge Agreements     |
| Exhibit 63 | Partial Termination of Payment Agreement Pledge Agreements     |
| Exhibit 64 | Partial Termination of Government Securities Pledge Agreements |



**EXHIBIT 49**  
**INDENTURE**

---

**BIG RIVERS ELECTRIC CORPORATION,  
GRANTOR,**

to

**[NAME OF TRUSTEE],  
TRUSTEE**

**INDENTURE**

Dated as of [\_\_\_\_], 2008

**FIRST MORTGAGE OBLIGATIONS**

---

- **THIS INSTRUMENT IS A MORTGAGE.**
- **THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.**
- **BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.**
- **THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, AFTER-ACQUIRED PROPERTY, FIXTURES AND PROCEEDS.**
- **FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED BY THIS INSTRUMENT.**
- **THE MAXIMUM ADDITIONAL INDEBTEDNESS WHICH MAY BE SECURED HEREUNDER IS \$3,000,000,000.**
- **THE TYPES OF PROPERTY COVERED BY THIS INSTRUMENT ARE DESCRIBED ON PAGES 1 THROUGH 7 AND EXHIBIT A.**
- **THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 38, 154 AND 155.**

**STATE TAXPAYER'S IDENTIFICATION NUMBER: 25757**

**FEDERAL TAXPAYER'S IDENTIFICATION NUMBER: 61-0597287**

**THIS INDENTURE WAS PREPARED BY JAMES M. MILLER OF SULLIVAN, MOUNTJOY,  
STAINBACK & MILLER, P.S.C., 100 ST. ANN BUILDING, OWENSBORO, KENTUCKY 42303,  
ATTORNEY FOR BIG RIVERS ELECTRIC CORPORATION.**

Signed: \_\_\_\_\_



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**THIS INDENTURE**, dated as of [\_\_\_\_\_] , 2008 (hereinafter called the “**Indenture**”), is between **BIG RIVERS ELECTRIC CORPORATION**, a cooperative corporation organized under the laws of the Commonwealth of Kentucky, as Grantor (hereinafter called the “**Company**”), and [NAME OF TRUSTEE], as Trustee (hereinafter called the “**Trustee**”).

### **RECITALS OF THE COMPANY**

The Company duly authorized and issued the Existing Obligations and has duly authorized the creation, execution and delivery from time to time after the date hereof of its notes, bonds and other obligations for the payment of money as hereinafter provided, issuable in one or more series (hereinafter called the “**Additional Obligations**”; the Existing Obligations and the Additional Obligation hereinafter called, collectively; the “**Obligations**”); and to secure the Obligations and provide for the authentication of the Existing Obligations on the date hereof and the authentication and delivery of the Additional Obligations by the Trustee from time to time, the Company has duly authorized the execution and delivery of this Indenture.

All things have been done which are necessary to make the Existing Obligations, and when duly executed and issued by the Company and authenticated and delivered by the Trustee hereunder, the Additional Obligations, the valid obligations of the Company, and to constitute this Indenture a valid indenture of mortgage, security agreement and financing statement and contract for the security of the Obligations, in accordance with the terms of the Obligations and this Indenture.

### **GRANTING CLAUSES**

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations and the performance of the covenants therein and herein contained and to declare the terms and conditions on which the Outstanding Secured Obligations are secured, and in consideration of the premises and of the purchase of, or loans and other obligations evidenced by, the Obligations, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over, hypothecate and confirm to (and does create a security interest in favor of) the Trustee, and its successors and assigns in the trust created hereby, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of every kind and description, real, personal or mixed, tangible or intangible, whether now owned or hereafter acquired by the Company, wherever located, and including all and singular the following described property, subject in all cases to Sections 5.2 and 11.2B and to the rights of the Company under this Indenture, including the rights set forth in Article V:

### **GRANTING CLAUSE FIRST**

A. All fee and leasehold estates and other interests in real property described in Exhibit A attached hereto, subject in each case to the restrictions, exceptions, reservations, terms,

conditions, agreements, leases, subleases, covenants, limitations, interests and other matters of record on the date hereof; and

B. All fixtures, easements, permits, licenses and rights-of-way constituting real property and all other interests in real property of the Company.

C. All rights and interests of the Company in all contracts (i) that relate to the ownership, operation or maintenance of any electric generation, transmission or distribution facility owned, whether solely or jointly, by the Company, (ii) that constitute Qualified EPC Contracts, (iii) for the management or operation of all or substantially all of the System, (iv) for the purchase or sale of electric power and energy by the Company and having an original term in excess of one (1) year, (v) for the transmission of electric power and energy by or on behalf of the Company and having an original term in excess of one (1) year, and (vi) for pooling or other power supply arrangements and having an original term in excess of one (1) year, including the contracts listed on Exhibit B attached hereto, and including any amendments, supplements, restatements, consolidations and replacements of any such contracts, but excluding any such contracts (a) for the purchase of electric power or energy by the Company for which the seller has no recourse, directly or indirectly, to the general credit of the Company, or (b) for the resale of the electric power or energy purchased pursuant to a contract described in the immediately preceding clause (a).

#### **GRANTING CLAUSE SECOND**

All other property, rights, privileges and franchises of the Company of every kind and description, real, personal or mixed, tangible or intangible, whether now owned or hereafter acquired by the Company, wherever located, including, without limitation, goods (including equipment, materials and supplies, but excluding electricity), accounts, general intangibles (but excluding contracts, contract rights and associated general intangibles (except contracts of the type subjected to the lien of this Indenture by Subdivision C of Granting Clause First and those described in Exhibit B), Trust Moneys, Competitive Transition Charges, and real property and interests in real property located in any of the states and counties in which any property described in Subdivision A or B of Granting Clause First is located, but excluding Excepted Property, it being the intention hereof that all of such property, rights, privileges and franchises now owned by the Company or acquired by the Company after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein.

#### **GRANTING CLAUSE THIRD**

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Company or by anyone on its behalf; and the Trustee is hereby authorized to receive the same at any time as additional security hereunder. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservation, limitation or condition which shall be set forth in a written instrument executed by the Company or the person so acting on its behalf or by the Trustee respecting the ownership, use and disposition of such property or the proceeds thereof.

## GRANTING CLAUSE FOURTH

Together with the following (other than Excepted Property): all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Indenture, all buildings, improvements, plants, systems, works, structures, electric power plants, stations and substations, powerhouses, electric transmission and distribution lines and systems, conduits, towers, poles, wires, cables, meters, office buildings, warehouses, garages, sheds, shops, and all other structures and buildings, machinery, engines, boilers, dynamos, generators, turbines, fuel handling and transportation facilities and devices, air and water pollution control and sewage and solid waste disposal facilities, transformers, electric and mechanical appliances, tools and other equipment, apparatus, appurtenances, and all other property of any nature appertaining to any of the electric utility plants, systems, business or operations of the Company, whether or not affixed to realty, used in the operation of any of the premises or plants or the System, or otherwise, which are now owned or hereafter acquired by the Company, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Company in and to the same and every part thereof including, without limitation, the aforementioned property located in the Counties of Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McCracken, McLean, Meade, Muhlenberg, Ohio, Union and Webster in the Commonwealth of Kentucky.

## EXCEPTED PROPERTY

There is, however, expressly excepted and excluded from the foregoing Granting Clauses and the lien and operation of this Indenture the following described property of the Company, now owned or hereafter acquired (herein sometimes referred to as “**Excepted Property**”):

A. all cash on hand or in banks or other financial institutions (excluding such cash to the extent it constitutes proceeds of the Trust Estate in which the security interest created by this Indenture is perfected pursuant to the Uniform Commercial Code, for so long as such perfection continues, and also excluding cash deposited or required to be deposited with the Trustee pursuant to this Indenture) claims, choses in action and judgments, all contracts, contract rights and associated general intangibles (except to the extent subjected to the lien of this Indenture pursuant to Granting Clause Second), Stock (including any interest of the Company in the CFC or in CoBank, allowances for emissions or similar rights granted by any governmental authority, bonds, notes, repurchase agreements, evidences of indebtedness and other securities and instruments, bills, patents, patent licenses and other patent rights, patent applications, service marks, trade names and trademarks, other than (i) Pledged Securities and any other property referred to in this paragraph A which is specifically described in Granting Clause First or is by the express provisions of this Indenture subjected or required to be subjected to the lien hereof;

B. all automobiles, buses, trucks, truck cranes, tractors, trailers, rolling stock, railcars and similar vehicles and movable equipment, and all parts, tools, accessories and supplies used in connection with any of the foregoing;

C. all vessels, boats, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all parts, tools, accessories and supplies used in connection with any of the foregoing;

D. all goods, inventory, wares and merchandise acquired or produced for the purpose of resale in the ordinary course of business, all materials and supplies and other personal property which are consumable (otherwise than by ordinary wear and tear) in their use in the operation of the business of the Company, and all hand and other portable tools, equipment and fuel;

E. all office furniture, equipment and supplies and all data processing, accounting and other computer equipment, software and supplies;

F. all leasehold interests of the Company as lessee (other than for the purposes set forth in paragraph G hereof) under leases for an original term (including any period for which the Company shall have a right of renewal) of less than five (5) years;

G. all leasehold interests of the Company as lessee for office purposes including, but not limited to, leasehold interests of the Company as lessee in connection with the Excepted Property enumerated in paragraphs B, C and E hereof;

H. all timber separated from the land included in the Trust Estate and all coal, ore, gas (natural or otherwise), oil, minerals and other natural resources, mined, extracted or otherwise separated from the land included in the Trust Estate and all electric energy, gas, steam, water and other products generated, produced or purchased;

I. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Company and whether falling within a general or specific description of property herein; **PROVIDED, HOWEVER**, that the Company covenants and agrees that it will hold each such last day in trust for the use and benefit of the Holders of the Outstanding Secured Obligations;

J. all permits, licenses, franchises, interests of the Company in leases, as lessee or lessor, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Indenture, whether now owned or hereafter acquired by the Company, which by their terms or by reason of applicable law would become void or voidable if granted, conveyed, mortgaged, transferred, assigned or pledged hereunder by the Company or which cannot be granted, conveyed, mortgaged, transferred, assigned or pledged by this Indenture without the consent of other parties whose consent is not secured, or without subjecting the Trustee to a liability not otherwise contemplated by the provisions of this Indenture, or the granting, conveying, mortgaging, transferring, assigning or pledging of which would result in a breach or a default thereof or would permit the termination or cancellation thereof, or which otherwise may not be hereby lawfully and effectively granted, conveyed, mortgaged, transferred, assigned and pledged by the Company;

- K. all property, real, personal and mixed, which is:
- (i) located outside the Commonwealth of Kentucky;
  - (ii) not specifically described in the Granting Clauses;
  - (iii) not specifically subjected or required to be subjected to the lien of this Indenture by any provision hereof; and
  - (iv) not part of or used or for use in connection with any property specifically subjected or required to be subjected to the lien hereof by the express provisions of this Indenture;

L. all personal property located outside the Commonwealth of Kentucky in which a security interest cannot be perfected solely by the filing of a financing statement under the Uniform Commercial Code;

M. any personal property in which a security interest cannot be lawfully perfected under the laws of the United States or of any state or in which the grant of a security interest would in the Opinion of Counsel be prohibited by applicable law;

N. Amounts paid to the Company as the prepayment of rent under the Head Leases to the extent such amounts were:

- (i) used to pay Transaction Costs (as defined in the Participation Agreements);
- (ii) applied to reduce the debt owed by the Company to the RUS in April, 2000; or
- (iii) transferred to Big Rivers Leasing Corporation in April, 2000 and used to buy the Lease Support Instruments in April, 2000.

O. All cash paid from time to time by the Company under the Operative Documents to the parties thereto, except any cash payable under any of the Alternative Settlement Option procedures under any Big Rivers Swap Agreement unless and until such amounts are placed in an escrow account in accordance with the Intercreditor Agreement for application in accordance with the Intercreditor Agreement;

P. All interest, if any, of the Company in the Lease Support Instruments, other than interests of the Trustee derived from any Payment Agreement Pledge, Government Securities Pledge Agreement or Funding Agreement Pledge described in any Participation Agreement or interests of the Company in the proceeds of the Lease Support Instruments to the extent paid to or transferred to the Company and not released pursuant to paragraphs N and O above;

Q. All interest, if any, of the Company in any Operative Document to which it is not party and which has not been assigned to it;

R. All interest, if any, of the Company in any Qualifying Swap, Qualifying Swap Surety Bond, Qualifying Facility Lease Surety Bond and Qualifying Letter of Credit (each as defined in the related Participation Agreement), without regard to whether any such instrument continues to be qualified within the meaning of such defined term, and any replacement thereof;

S. All interest, if any, of the Company in the membership interest in Big Rivers Leasing LLC, other than interests of the Trustee arising under or derived from that certain Membership Interest Security Agreement or arising pursuant to and in accordance with the Intercreditor Agreement; and

T. all property released from the lien of this Indenture without being sold, exchanged or otherwise disposed of by the Company, as provided in Section 5.2.

**PROVIDED, HOWEVER,** that if, upon the occurrence of an Event of Default, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Trust Estate, all the Excepted Property described or referred to in the foregoing paragraphs A through H, inclusive, then owned or thereafter acquired by the Company, shall immediately, and, in the case of any Excepted Property described or referred to in paragraphs I, J and L, upon demand of the Trustee or such other trustee or receiver, become subject to the lien hereof to the extent permitted by law, and the Trustee or such other trustee or receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and whenever all Events of Default shall have been cured and the possession of all or substantially all of the Trust Estate shall have been restored to the Company, all such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

The Company may, however, pursuant to Granting Clause Third, subject to the lien of this Indenture any Excepted Property, whereupon the same shall cease to be Excepted Property.

**TO HAVE AND TO HOLD** all such property, rights, privileges and franchises hereby and hereafter (by Supplemental Indenture or otherwise) granted, bargained, sold, alienated, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over or confirmed (or in which a security interest is granted) as aforesaid, together with all the tenements, hereditaments and appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited or required to be deposited with the Trustee (other than any such cash which is specifically stated herein not to be deemed part of the Trust Estate) being herein collectively called the “**Trust Estate**”), unto the Trustee, and its successors and assigns in the trust herein created, forever.

**SUBJECT, HOWEVER,** to (i) Permitted Exceptions and (ii) to the extent permitted by Section 13.6 as to property hereafter acquired (a) any duly recorded or perfected Prior Lien that may exist thereon at the date of the acquisition thereof by the Company and (b) purchase money mortgages, other purchase money liens, chattel mortgages, conditional sales agreements or other title retention agreements created by the Company at the time of acquisition thereof.

**BUT IN TRUST, NEVERTHELESS**, with power of sale, for the equal and proportionate benefit and security of the Holders from time to time of all the Outstanding Secured Obligations without any priority of any Outstanding Secured Obligation over any other Outstanding Secured Obligation and for the enforcement of the payment of Outstanding Secured Obligations in accordance with their terms.

**UPON CONDITION** that, until the happening of an Event of Default and subject to the provisions of Article V, and not in limitation of the rights elsewhere provided in this Indenture, including the rights set forth in Article V, the Company shall have the right to (i) possess, use, manage, operate and enjoy the Trust Estate (other than cash and securities constituting part of the Trust Estate that are deposited with the Trustee), (ii) explore for, gather, cut, mine and produce crops, timber, coal, ore, gas, oil, minerals or other natural resources and products, and to use, consume and dispose of any thereof, and (iii) collect, receive, use, make payments from, transfer, invest, otherwise utilize or employ amounts constituting or derived from the rents, issues, tolls, earnings, profits, revenues, products and proceeds from the Trust Estate or the operation of the property constituting part of the Trust Estate.

Should the indebtedness secured by this Indenture be paid according to the tenor and effect thereof when the same shall become due and payable and should the Company perform all covenants herein contained in a timely manner, then this Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the Existing Obligations are to be authenticated and delivered, the Additional Obligations are to be secured and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts herein set forth, and the Company does hereby covenant and agree to and with the Trustee, for the equal and proportionate benefit of all Holders of the Outstanding Secured Obligations, as follows:

## **ARTICLE I**

### **DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

#### **Section 1.1 Definitions.**

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

A. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

B. At any time at which this Indenture is qualified or required to be qualified under the TIA, all other terms used herein which are defined in the TIA either directly or by reference therein, have the meanings assigned to them therein.

C. All accounting terms not otherwise defined herein have the meanings assigned to them, and all determinations and computations herein provided for shall be made, in accordance with Accounting Requirements, and the express reference to "Accounting Requirements" with

respect to some accounting terms, determinations or computations shall not imply that other accounting terms, determinations and computations shall not be defined or made in accordance with “Accounting Requirements.”

D. All references herein to “Accounting Requirements” refer to such requirements as are in use in the United States at the time of the determination of any computation required or permitted hereunder or, at the option of the Company, such requirements in use on the date of this Indenture.

E. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision unless specifically so stated.

F. The words “include” and “including” shall not be terms of limitation, and shall in all cases, whether or not expressly stated, be read to be “include, without limitation,” and “including, without limitation,” respectively.

G. All references in this instrument to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed, unless such Article, Section or other subdivision of this instrument shall have been amended, in which case the reference shall be to such Article, Section or other subdivision as so amended.

H. A definition of or reference to any document, instrument or agreement includes any amendment to, or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the contact in which such reference is used.

Certain terms used principally in Article X are defined in that Article.

“**Accountant**” means a Person engaged in the practice of accounting who (except as otherwise expressly provided in this Indenture) may be employed by or affiliated with the Company and who need not be independent, certified, licensed or public.

“**Accounting Requirements**” means the requirements of any system of accounts prescribed by RUS so long as RUS is the Holder of any Outstanding Secured Obligation; provided, however, that if the Company is specifically required by FERC to employ the system of accounts prescribed by FERC, then “Accounting Requirements” means the system of accounts prescribed by FERC; provided, further, however, that if RUS is not a Holder of any Outstanding Secured Obligation or, if such a Holder, RUS does not prescribe a system of accounts applicable to the Company, and the Company is not specifically required by FERC to employ the system of accounts prescribed by FERC, or FERC does not prescribe a system of accounts applicable to the Company, then “Accounting Requirements” means the requirements of a regulatory authority having jurisdiction over the Company or, in the absence thereof, the requirements of generally accepted accounting principles applicable to similar Persons conducting businesses similar to that of the Company. Generally accepted accounting principles refers to a common set of accounting standards and procedures that are either promulgated by an authoritative accounting rulemaking body or accepted as appropriate due to widespread application in the United States.



“**acquire**” means to acquire by lease, purchase, exchange, construction, merger, consolidation, conveyance, transfer or otherwise. The terms “**acquired**,” “**acquiring**” and “**acquisition**” have meanings correlative to the foregoing.

“**Acquired Facility**” means any property which, within six (6) months prior to the date of its acquisition by the Company, has been used or operated by a Person or Persons other than the Company for a purpose similar to that in which such property has been or is to be used or operated by the Company.

“**Act**” when used with respect to any Holder or Holders has the meaning stated in Section 1.2.

“**Additional Obligations**” has the meaning stated in the first recital of this Indenture and includes any Obligation executed, issued, authenticated and delivered hereunder after the date hereof.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “**control**” of any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of Stock, by contract or otherwise; and the terms “**controlling**” and “**controlled**” have meanings correlative to the foregoing.

“**Ambac Swap Obligations**” shall mean those Existing Obligations identified in “Ambac Swap Obligations” on Exhibit C.

“**Amount of Property Additions**” or “**Amount**” as applied to any Property Additions means the Cost to the Company of such Property Additions or the Fair Value to the Company of such Property Additions, whichever is less.

“**Application**” means an application for the authentication and delivery of Additional Obligations, the advance or issuance of any unadvanced or unissued amount or portion of any Conditional Obligation or series of Conditional Obligations, the release of any part of the Trust Estate, the withdrawal of Deposited Cash or Trust Moneys under any provision of this Indenture and shall consist of, and shall not be deemed complete until there shall have been delivered to the Trustee, such cash, Obligations, securities and documents as are required by such provision to establish the right of the Company to the action applied for. The date of a particular Application shall be deemed to be the date of completion of all such deliveries to the Trustee and not the date on which any particular document is delivered.

“**Appraiser**” means a Person engaged in the business of appraising property or otherwise qualified to pass upon the Fair Value to the Company of property or any other valuation of property that may be required pursuant to the provisions of this Indenture who (except as otherwise expressly provided in this Indenture) may be employed by or affiliated with the Company.

“**Authenticating Agent**” when used with respect to any particular series of Obligations means any Person named as Authenticating Agent for such series in the provisions of this

Indenture creating such series until a successor Authenticating Agent therefor becomes such pursuant thereto, and thereafter “**Authenticating Agent**” shall mean such successor.

“**Available Margins Certificate**” means an Officers’ Certificate, dated not more than thirty (30) days prior to the date of the related Application, and signed by a Person who is an Accountant (who may be one of the two signing Officers), stating that:

A. the Margins for Interest Ratio is not less than 1.10 for one of the following periods of time: (i) the fiscal year of the Company immediately preceding the fiscal year in which the Application is made, or (ii) if the Application is made within ninety (90) days after the end of a fiscal year, the second preceding fiscal year of the Company or (iii) any twelve (12) consecutive calendar months during the period of fifteen (15) calendar months immediately preceding the first day of the calendar month in which the Application is made **PROVIDED, HOWEVER**, that if any such period of time is one in which this Indenture has not been in effect for the full period of time, then, in lieu of a statement as to the Margins for Interest Ratio, such Available Margins Certificate shall state that the Times Interest Earned Ratio (as defined in the Existing Mortgage) is not less than 1.05 for such period of time; and

B. the Margins for Interest Ratio has been calculated in accordance with the definitions contained in this Indenture **PROVIDED, HOWEVER**, that if the Available Margins Certificate makes a statement as to the Times Interest Earned Ratio and not the Margins for Interest Ratio, stating that the Times Interest Earned Ratio has been calculated in accordance with the provisions of the Existing Mortgage.

If any period of twelve (12) months referred to in an Available Margins Certificate has been a period with respect to which an annual report is required to be filed by the Company pursuant to Section 11.4, such Certificate shall be accompanied by a report of an Independent Accountant stating in substance that nothing came to the attention of such Accountant in connection with the audit of such period that would lead such Accountant to believe that there was any incorrect or inaccurate statement in such Available Margins Certificate; **PROVIDED, HOWEVER**, that if the Application is made prior to the date on which an annual report is required to be filed by the Company pursuant to Section 11.4, such Certificate shall not be accompanied by such Independent Accountant’s report. Each such report of an Independent Accountant shall include the statement as to independence required by the definition of the term “Independent.”

“**Big Rivers Swap Agreements**” shall mean, collectively, the following:

- (a) Master Agreement (PBR-1), dated April 18, 2000, between Ambac Credit Products, LLC and the Company.
- (b) Master Agreement (PBR-2), dated April 18, 2000, between Ambac Credit Products, LLC and the Company.
- (c) Master Agreement (PBR-3), dated April 18, 2000, between Ambac Credit Products, LLC and the Company.
- (d) Master Agreement (FBR-1), dated April 18, 2000, between Ambac Credit Products, LLC and the Company.

(e) Master Agreement (PBR-2), dated April 18, 2000, between Ambac Credit Products, LLC and the Company.

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

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

**“Bondable Additions”** means the excess of (i) the Amount of Property Additions over (ii) the amount of Retirements (less credits thereto), computed in accordance with Section 4.2 and certified as Bondable Additions in the Summary of Certificate as to Bondable Additions then being filed in accordance with Section 4.2.

**“Bondable Property”** means all Property Additions, and all property owned by the Company on the Cut-Off Date which would constitute Property Additions if acquired after that date (except for the requirement to deliver Title Evidence with respect to such property).

**“Book-Entry System”** means that system whereby the clearance and settlement of transactions in Obligations held in such system is made through electronic book-entry changes, thereby eliminating the need for physical movement of Obligations, certificates or other instruments.

**“Capital Assets Lease”** has the meaning stated in Section 6.6.

**“Cede & Co.”** means Cede & Co., as nominee for DTC, and any successor nominee of DTC.

**“Certificate as to Bondable Additions”** means an Officers’ Certificate, dated not more than thirty (30) days prior to the date of the related Application, complying with the requirements of Section 4.2 and signed by a Person who is an Engineer or an Appraiser (who may be one of the two signing Officers) and a Person who is an Accountant (who may be one of the two signing Officers); provided, however, that, unless a Person signing as an Engineer, Appraiser or Accountant is also one of the two signing Officers, a Person signing as one of such experts may state that he is signing only with respect to the particular portions of the Certificate as to Bondable Additions that are within his expertise; provided further, however, that all portions of the Certificate as to Bondable Additions must be within the expertise of one of such signing experts.

**“Certified Progress Payments”** means payments, made by the Company under a Qualified EPC Contract, for generation, transmission and related facilities that will constitute Property Additions upon the performance of such Qualified EPC Contract, that are certified by the Company to the Trustee as the basis for (i) loans or advances under Conditional Obligations under Section 4.6 or (ii) the authentication and delivery of Obligations under Section 4.9.

**“CFC”** means National Rural Utilities Cooperative Finance Corporation and its successors and assigns.

**“CoBank”** means CoBank, ACB and its successors and assigns.

**“Commission”** means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or if at any time after the execution of this instrument such Commission is not existing and performing the duties theretofore assigned to it under the TIA, then the body performing such duties at such time.

**“Company”** means the Person named as the “Company” in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, except to the extent otherwise contemplated by Section 11.2B, “Company” shall mean such successor Person.

**“Company Consent,” “Company Order” and “Company Request”** mean, respectively, a written consent, order or request signed in the name of the Company by an Officer of the Company, and delivered to the Trustee.

**“Conditional Obligations”** has the meaning stated in Section 4.6.

**“Cost to the Company”** of Property Additions means the actual cost of acquisition thereof by the Company determined in accordance with Accounting Requirements. Such cost of acquisition shall include capitalized interest and other expenses (including taxes, engineering costs and expenses, legal costs and expenses, allocated administrative charges, insurance, casualties and supervisory fees and expenses) relating to such acquisition and properly chargeable to the Company’s property accounts in accordance with Accounting Requirements. When the consideration for Property Additions consists (in whole or in part) of property or securities, the fair market value of such consideration (as of the date of the transfer and delivery thereof) shall be deemed the equivalent of cash in the determination of cost. The Cost to the Company of any Property Additions acquired as an Acquired Facility shall include the cost to the Company of any franchises, contracts, operating agreements and other rights and Non-Bondable Property simultaneously acquired with, and related to, such Property Additions, for which no separate or distinct consideration shall have been paid or apportioned; and, except in such case, the Cost to the Company of any property, only part of which constitutes Property Additions and all of which is acquired for a single consideration, shall be properly allocated to Property Additions in the Certificate as to Bondable Additions in which such Property Additions are certified to the Trustee. In the case of Property Additions consisting of property owned by a successor corporation at the time it shall have become such by consolidation, merger, conveyance or transfer as provided in Article XI, or acquired by it by such consolidation, merger, conveyance or transfer, the Cost to the Company shall be the gross amount at which such property is recorded in the plant or property accounts (exclusive of any amounts carried in plant or property adjustment accounts) on the books of such successor corporation, or the constituent or predecessor corporation from which such property was acquired, immediately prior to such consolidation, merger, conveyance or transfer, less related reserves for depreciation, depletion, obsolescence, retirements and amortization as of that date.

**“Credit Enhancement”** means, with respect to any Obligation, the provision of an insurance policy, letter of credit, surety bond or any other undertaking whereby the provider thereof becomes unconditionally obligated to pay when due, to the extent not paid by the

Company or otherwise, the principal of and interest on such Obligation or on another obligation the payment on which is (i) secured by such Obligation or (ii) credited against the principal and interest due on such Obligation.

“**Credit Enhancement Obligations**” has the meaning stated in Section 4.7.

“**Credit Enhancer**” means any Person that, pursuant to this Indenture or a Supplemental Indenture, is designated as a Credit Enhancer and which provides Credit Enhancement.

“**Cut-Off Date**” means [\_\_\_\_\_], 2008.

“**Defaulted Interest**” has the meaning stated in Section 3.9.

“**Defeasance Securities**” means and includes any of the following securities, if and to the extent the same are not subject to redemption or call prior to maturity by anyone other than the holder thereof and are at the time legal for investment of the Company’s funds:

A. any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America; and

B. any certificates or any other evidences of an ownership interest in obligations or in specified portions thereof (which may consist of specified portions of the interest thereon) of the character described in paragraph A above.

“**Deposited Cash**” has the meaning stated in Section 4.4.

“**Distribution**” has the meaning stated in Section 13.15.

“**DTC**” means The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

“**DTC Participant**” means a broker-dealer, bank or other financial institution for which DTC holds Obligations.

“**Engineer**” means a Person engaged in the engineering profession or otherwise qualified to pass upon engineering matters who (except as otherwise expressly provided in this Indenture) may be employed by or affiliated with the Company and who need not be independent, certified or licensed.

“**Equity Strip Amount**” with respect to any Facility Lessor (E) Obligation for any date shall mean the amount identified as the “Equity Strip Amount” for such date under the description of each such Facility Lessor (E) Obligation on Exhibit C.

“**Event of Default**” has the meaning stated in Section 8.1 or in any Supplemental Indenture. An Event of Default shall “exist” if an Event of Default shall have occurred and be continuing.

“**Excepted Property**” has the meaning stated in the Granting Clauses hereof.

**“Existing Mortgage”** means the Third Restated Mortgage and Security Agreement made by and among the Company, United States of America, Ambac Assurance Corporation, Credit Suisse First Boston, U.S. Bank Trust National Association, CFC, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust and Ambac Credit Products, LLC, dated as of August 1, 2001 as amended by the First Amendment to Third Restated Mortgage and Security Agreement dated as of July 15, 2003.

**“Existing Obligations”** means the Series 1983 Revenue Bond Obligations, the Series 2001A Revenue Bond Obligations, the Facility Lessor Obligations, the Ambac Swap Obligations and the RUS Obligations identified on Exhibit C attached hereto and authenticated by the Trustee pursuant to Section 3.1, and any amendments, supplements, extensions, replacements or restatements consistent with Section 3.1.

**“Facility Lease”** and collectively, the **“Facility Leases”** shall mean each of the following:

- (1) Facility Lease Agreement (PBR-1), dated as of August 1, 2000, between PBR-1 Statutory Trust and the Company;
- (2) Facility Lease Agreement (PBR-2), dated as of August 1, 2000, between PBR-2 Statutory Trust and the Company;
- (3) Facility Lease Agreement (PBR-3), dated as of August 1, 2000, between PBR-3 Statutory Trust and the Company;
- (4) Facility Lease Agreement (FBR-1), dated as of August 1, 2000, between FBR-1 Statutory Trust and the Company; and
- (5) Facility Lease Agreement (FBR-2), dated as of August 1, 2000, between FBR-2 Statutory Trust and the Company.

**“Facility Lessor (D) Obligations”** shall mean those Existing Obligations identified as the “Facility Lessor (D) Obligations” on Exhibit C.

**“Facility Lessor (E) Obligations”** shall mean those Existing Obligations identified as the “Facility Lessor (E) Obligations” on Exhibit C.

**“Facility Lessor Obligations”** shall mean the Facility Lessor (E) Obligations and the Facility Lessor (D) Obligations.

**“Fair Value to the Company”** means, when used with respect to any particular Property Additions, the fair value thereof to the Company, determined as of the date of the Company’s acquisition of such Property Additions and in accordance with the provisions of this Indenture; PROVIDED, HOWEVER, that the “Fair Value to the Company” of Property Additions that would not constitute Property Additions but for satisfaction of the conditions set forth in clauses (i) and (ii) of paragraph (4) of the definition of “Property Additions” set forth below shall not exceed the product obtained by multiplying the Fair Value to the Company of such Property Additions (determined as if the remaining term of the leasehold interest to which such property relates were equal to the remaining useful economic life of such property) by a fraction, the numerator of which shall be the remaining term of the leasehold interest to which such property relates (including any periods for which the Company has the option to extend or renew such

leasehold interest) as of the date of the Application and the denominator of which is the useful economic life of such Property Additions; and PROVIDED, **FURTHER**, that the “Fair Value to the Company” of Property Additions that would not constitute Property Additions but for satisfaction of the conditions set forth in clause (ii) of paragraph C of the definition of “Property Additions” shall take into account any irrevocable deposit by the Company of cash or securities (which securities must be rated by any nationally recognized statistical rating organization the higher of (1) “A” or (2) as high as any series of Obligations are rated) in a fund or funds for the exclusive purposes of discharging or securing the Company’s obligations to make rental payments and payments of a fixed price purchase option under any such lease. The Fair Value to the Company of any particular Property Additions subject to a lien constituting a Permitted Exception or permitted by the proviso to Section 5.2D(2), shall be determined as if such property were free of such lien.

“**FERC**” shall mean the Federal Energy Regulatory Commission, or any agency or other governmental body succeeding to the functions thereof.

“**Head Lease**” and collectively, “**Head Leases**” shall mean, collectively, the following:

- (a) Head Lease Agreement (PBR-1), dated as of April 1, 2000, between the Company and PBR-1 Statutory Trust.
- (b) Head Lease Agreement (PBR-2), dated as of April 1, 2000, between the Company and PBR-2 Statutory Trust.
- (c) Head Lease Agreement (PBR-3), dated as of April 1, 2000, between the Company and PBR-3 Statutory Trust.
- (d) Head Lease Agreement (FBR-1), dated as of April 1, 2000, between the Company and FBR-1 Statutory Trust.
- (e) Head Lease Agreement (FBR-2), dated as of April 1, 2000, between the Company and FBR-2 Statutory Trust.

“**Holder**” when used with respect to any Obligation means the Person in whose name such Obligation is registered in the Obligation Register.

“**Indenture**” means this instrument as originally executed or as it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental hereto (including Supplemental Indentures) entered into pursuant to the applicable provisions hereof or otherwise.

“**Independent**” when used with respect to any specified Person means such a Person who (i) is in fact independent, (ii) does not have any direct financial interest or any material indirect financial interest in the Company or in any other obligor upon the Obligations or in any Affiliate of the Company or of such other obligor and (iii) is not connected with the Company or such other obligor as an officer, employee, promoter, underwriter, trustee, member, partner, director or person performing similar functions, and (iv) is licensed or certified to the extent required by law and in accordance with standards applicable to the profession in which such Person is engaged. Whenever it is herein provided that any Independent Person’s opinion, report or certificate shall be furnished to the Trustee, such opinion, report or certificate shall state that the

signer has read this definition and that the Person furnishing such opinion, report or certificate is Independent within the meaning thereof

**“Intercreditor Agreement”** shall mean the Intercreditor Agreement, dated as of [\_\_\_\_\_] , 2008, by and among the Company, the Trustee, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, PBR-1 OP Statutory Trust, PBR-2 OP Statutory Trust , FBR-1 OP Statutory Trust, FBR-2 OP Statutory Trust, FBR-3 OP Statutory Trust, Bluegrass Leasing, Fleet Real Estate, Inc., AME Investments, LLC, AME Asset Funding, LLC, CoBank, ACB, Ambac Credit Products, LLC and Ambac Assurance Corporation.

**“Interest Charges”** for any period means the total interest charges (whether capitalized or expensed) for such period (determined in accordance with Accounting Requirements) related to (i) Outstanding Secured Obligations of the Company, or (ii) outstanding Prior Lien Obligations of the Company, in all cases including amortization of debt discount and premium on issuance, but excluding all interest charges related to Obligations that have actually been paid by another Person that has agreed to be primarily liable for such Obligation pursuant to an assumption agreement or similar undertaking, provided such assumption agreement or similar undertaking is not a mechanism by which the Company continues to make payments to such Person based on payments made by such Person on account of its assumed liability or by which the Company otherwise seeks to avoid having interest related to such Obligations included in the definition of Interest Charges without the economic substance of an assumption of liability on the part of such Person; **PROVIDED, HOWEVER**, that with respect to any calculation of Interest Charges for any period prior to the date hereof, “Interest Charges” means the total interest charges (whether capitalized or expensed of the Company for such period (determined in accordance with Accounting Requirements) with respect to interest related to indebtedness the obligation for the payment of which was secured under the Existing Mortgage or by a lien against property subject to the Existing Mortgage prior to or on a parity with the lien of the Existing Mortgage, other than “Permitted Encumbrances” (as defined in the Existing Mortgage), in all cases including amortization of debt discount and premium on issuance.

**“Interest Payment Date”** means the Stated Maturity of an installment of interest on the Obligations.

**“Lease Support Instruments”** shall mean, collectively, the following:

(i) five Payment Agreements, each dated as of April 1, 2000, between Big Rivers Leasing LLC (successor to Big Rivers Leasing Corporation) and AME Asset Funding, LLC and labeled respectively, Payment Agreement PBR 1, Payment Agreement PBR-2, Payment Agreement PBR-3, Payment Agreement FBR-1 and Payment Agreement FBR-2;

(ii) the “Government Securities” and “Other Government Securities” referenced in five Government Securities Pledge Agreements, each dated as of April 1, 2000, among (a) Big Rivers Leasing LLC (successor to Big Rivers Leasing Corporation), Ambac Credit Products, LLC, the RUS, Ambac, CFC, State Street Bank and Trust Company of Connecticut, National Association, as Government Securities Collateral



Agent, and (b) PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, respectively, and labeled Government Securities Pledge Agreement (PBR-1), Government Securities Pledge Agreement (PBR-2), Government Securities Pledge Agreement (PBR-3), Government Securities Pledge Agreement (FBR-1) and Government Securities Pledge Agreement (FBR-2), respectively; and

(iii) five Funding Agreements, each dated as of April 19, 2000, between Big Rivers Leasing LLC (successor to Big Rivers Leasing Corporation) and AIG Matched Funding Corp. and labeled Funding Agreement (PBR-1), Funding Agreement (PBR-2), Funding Agreement (PBR-3), Funding (FBR-1) and Funding Agreement (FBR 2), respectively.

“**Leased Assets**” has the meaning stated in Section 6.6.

“**Margins for Interest**” means, for any period, the sum of (i) net margins of the Company for such period (which, except as otherwise provided in this definition, shall be determined in accordance with Accounting Requirements), which shall include revenues of the Company, subject to possible refund at a future date, but which shall exclude provisions for any (a) non-recurring charge to income, whether or not recorded as such on the Company’s books, of whatever kind or nature (including the non-recoverability of assets or expenses), except to the extent the Board of Directors determines to recover such non-recurring charge in Rates, (b) refund of revenues collected or accrued by the Company in any prior year subject to possible refund; plus (ii) the amount, if any, included in the computation of net margins for accruals for federal and state income and other taxes imposed on income after deduction of interest expense for such period; plus (iii) the amount, if any, included in the computation of net margins for any losses incurred by any Subsidiary or Affiliate of the Company; plus (iv) the amount, if any, the Company actually receives in such period as a dividend or other distribution of earnings or profits of any Subsidiary or Affiliate (whether or not such earnings were for such period or any earlier period or periods); minus (v) the amount, if any, included in the computation of net margins for any earnings or profits of any Subsidiary or Affiliate of the Company; and minus (vi) the amount, if any, the Company actually contributes to the capital of, or actually pays under a guarantee by the Company of an obligation of, any Subsidiary or Affiliate in such period to the extent of any accumulated losses incurred by such Subsidiary or Affiliate (whether or not such losses were for such period or any earlier period or periods), but only to the extent such losses have not otherwise caused other contributions or guarantee payments to be included in net margins for purposes of computing Margins for Interest for a prior period and such amount has not otherwise been included in net margins.

“**Margins for Interest Ratio**” means, for any period, (i) the sum of (a) Margins For Interest plus (b) Interest Charges, divided by (ii) Interest Charges.

“**Maturity**” means, when used with respect to any Obligation, the date on which the principal of such Obligation, or any installment thereof, becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration or acceleration or call for redemption, purchase or prepayment or otherwise; **PROVIDED, HOWEVER**, any obligation to purchase or otherwise acquire any Additional Obligation from its Holder shall not constitute an

obligation to pay the principal of such Obligation if so provided in the Supplemental Indenture creating such Additional Obligation.

**“Member Cooperative”** means any cooperative or other entity that is a member of the Company and any electric distribution cooperative that is a member of a member of the Company.

**“Membership Interest Security Agreement”** shall mean the Amended and Restated Stock Pledge Agreement dated as of [\_\_\_\_\_] 2008 by and among the Company in favor of U.S. Bank National Association, as collateral agent for the benefit of Ambac Credit Products, PBR-1 Statutory Trust, PBR-2 Statutory Trust, PBR-3 Statutory Trust, FBR-1 Statutory Trust and FBR-2 Statutory Trust.

**“Non-Bondable Property”** means any property owned by the Company other than Bondable Property.

**“Obligation Register”** and **“Obligation Registrar”** have the respective meanings stated in Section 3.6.

**“Obligations”** has the meaning stated in the first recital of this Indenture and includes any Obligation executed, issued, authenticated and delivered hereunder after the date hereof.

**“Officer”** for purposes of any consent, order, certificate, opinion, request or other writing to be delivered hereunder or other action hereunder means the President, Chief Executive Officer, any Executive Vice President, any Senior Vice President, the senior financial officer of the Company or any other officer or employee of the Company authorized by a Board Resolution to give such consent, order, certificate, opinion or other writing, or to make such request or to perform such action.

**“Officers’ Certificate”** means a certificate signed by any two Officers of the Company. Wherever this Indenture requires that an Officers’ Certificate be signed also by an Engineer or an Accountant or other expert, such Engineer, Accountant or other expert may (except as otherwise expressly provided in this Indenture) be employed by the Company and may be one of the two signing Officers.

**“Operative Documents”** shall mean, collectively, the following:

- (a) The “Operative Documents” as defined in the Participation Agreement (PBR-1);
- (b) The “Operative Documents” as defined in the Participation Agreement (PBR-2);
- (c) The “Operative Documents” as defined in the Participation Agreement (PBR-3);
- (d) The “Operative Documents” as defined in the Participation Agreement (FBR-1);
- (e) The “Operative Documents” as defined in the Participation Agreement (FBR-2);
- and
- (f) The Restructuring Documents.

**“Opinion of Counsel”** means a written opinion (or, in the case of matters relating to title, real or personal property records or the existence or priority of liens, a written certificate) of counsel who may (except as otherwise expressly provided in this Indenture) be employed by, or

be outside counsel to, the Company and who shall be reasonably acceptable to the Trustee. The acceptance without objection by the Trustee of any Opinion of Counsel shall be conclusive evidence that such counsel is acceptable to the Trustee.

“**Original Issue Discount Obligation**” means any Obligation declared to be an “Original Issue Discount Obligation” in the Supplemental Indenture establishing the series to which such Obligation belongs.

“**Outstanding**” when used with respect to Obligations means, as of the date of determination, all Existing Obligations authenticated under this Indenture and all Additional Obligations authenticated and delivered under this Indenture, except:

A. Obligations, or any portion thereof, theretofore canceled by the Trustee or delivered to the Trustee for cancellation or delivered to the Trustee marked surrendered, canceled, satisfied or otherwise evidenced to the Trustee’s satisfaction as paid or tendered for reissue for payment pursuant to any Supplemental Indenture (and which amount may not be readvanced);

B. Obligations for whose payment or redemption money, or Defeasance Securities in the necessary amount (such amount to be sufficient in the opinion of an Independent public accountant expressed in a certificate signed by such firm and delivered to the Trustee) has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust, for the Holders of such Obligations, **PROVIDED** that, if such Obligations are to be redeemed or prepaid, irrevocable notice of such redemption or prepayment has been duly given or other provision therefor satisfactory to the Trustee has been made;

C. Obligations which have been paid pursuant to Section 3.7 or in exchange for or in lieu of which other Obligations have been authenticated and delivered pursuant to this Indenture, other than any such Obligations in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Obligations are held by a bona fide purchaser in whose hands such Obligations are valid obligations of the Company;

D. Additional Obligations which have not been sold, pledged or subjected to a security interest and have been surrendered to the Trustee, or which a portion thereof has not been advanced and with respect to such portion any commitment to advance thereunder has terminated, as provided in the last paragraph of Section 4.1; and

E. Any Facility Lessor Obligation owned by the Company;

**PROVIDED, HOWEVER,** that in determining whether the Holders of the requisite principal amount of Obligations Outstanding or the Obligations Outstanding of a series, as the case may be, have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) Obligations owned by the Company or any other obligor upon the Obligations or any Affiliate of the Company or of such other obligor (unless the Company, such obligor and such Affiliate or Affiliates own all Obligations Outstanding under this Indenture or, as to matters relating solely to a particular series, all Obligations Outstanding of such series, as the case may be, determined without regard to this proviso) shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request,

demand, authorization, direction, notice, consent or waiver, only Obligations which are registered in the name of the Company or an Affiliate of the Company of which the Trustee has been given written notice shall be so disregarded; Obligations so owned which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledge establishes to the satisfaction of the Trustee the pledgee's right to act with respect to such Obligations and that the pledgee is not the Company or any other obligor upon the Obligations or any Affiliate of the Company or of such other obligor and (ii) with respect to Facility Lessor Obligations and the Ambac Swap Obligations the determination of the principal amount Outstanding under such Obligations shall be determined in accordance with Section 1.19. For purposes of the definition of "Outstanding," any Credit Enhancer shall not be an obligor upon any Obligation.

**"Outstanding Secured Obligations"** means, as of the date of determination, (i) all Obligations then Outstanding other than Obligations then owned by the Company or any wholly-owned Subsidiary and held in its treasury and (ii) all Obligations, if any, alleged to have been destroyed, lost or stolen which have been replaced or paid as provided in Section 3.7 but whose ownership and enforceability by the Holder thereof have been established by a court of competent jurisdiction or other competent tribunal or otherwise established to the satisfaction of the Company and the Trustee.

**"Participation Agreements"** and, collectively, the **"Participation Agreements"** shall mean the following:

(a) Participation Agreement (PBR-1), dated as of April 1, 2000, among the Company, PBR-1 Statutory Trust, PBR-1 OP Statutory Trust, Bluegrass Leasing, AME Investments, LLC and CoBank, ACB ("Participation Agreement (PBR-1)").

(b) Participation Agreement (PBR-2), dated as of April 1, 2000, among the Company, PBR-2 Statutory Trust, PBR-2 OP Statutory Trust, Bluegrass Leasing, AME Investments, LLC and CoBank, ACB ("Participation Agreement (PBR-2)").

(c) Participation Agreement (PBR-3), dated as of April 1, 2000, among the Company, PBR-3 Statutory Trust, PBR-3 OP Statutory Trust, Bluegrass Leasing, AME Investments, LLC and CoBank, ACB ("Participation Agreement (PBR-3)").

(d) Participation Agreement (FBR-1), dated as of April 1, 2000, among the Company, FBR-1 Statutory Trust, FBR-2 OP Statutory Trust, Fleet Real Estate, Inc., AME Investments, LLC and CoBank, ACB ("Participation Agreement (FBR-1)").

(e) Participation Agreement (FBR-2), dated as of April 1, 2000, among the Company, FBR-2 Statutory Trust, FBR-2 OP Statutory Trust, Fleet Real Estate Inc., AME Investments, LLC and CoBank, ACB ("Participation Agreement (FBR-2)").

**"Paying Agent"** means the Company and any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Obligations on behalf of the Company.

**"Periodic Offering"** means an offering of Additional Obligations of a series from time to time any or all of the specific terms of such Additional Obligations, including the rate or rates of interest, if any, thereon, the Stated Maturity or Maturities thereof and the redemption provision,

if any, with respect thereto, are to be determined by the Company or its agents at or about the time of the issuance of such Additional Obligations.

**“Performance Agreement”** means a surety or other agreement that guarantees the performance of the party other than the Company under a Qualified EPC Contract or indemnifies the Company and the Trustee against any loss or damage resulting from such other party’s default or non-performance under such contract, which is in the form of a performance or supply bond or other agreement for the purpose of so guaranteeing performance or indemnifying against loss.

**“Permitted Exceptions”** means:

A. as to the property described in subdivisions A and B of Granting Clause First, the restrictions, exceptions, reservations, terms, conditions, agreements, leases, subleases, covenants, limitations, interests and other matters which are of record on the date hereof, **PROVIDED** that such matters do not materially impair the use of such property for the purposes for which it is held by the Company;

B. as to property which the Company may hereafter acquire, any restriction, exception, reservation, term, condition, agreement, lease, sublease, covenant, limitation, interest or other matter which is of record on the date of such acquisition or expressed or provided in the deeds or other instruments under which the Company shall acquire the same, **PROVIDED** that such matters do not materially impair the use of such property for the purposes for which it is held by the Company;

C. liens for taxes, assessments and other governmental charges not delinquent, and ordinances establishing assessments for sewer, lighting or other local improvement districts;

D. liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings and with respect to which the Company shall have set aside on its books adequate reserves;

E. mechanics’, workmen’s, repairmen’s, materialmen’s, warehousemen’s, contractors’, subcontractors’ and carriers’ liens and other similar liens arising in the ordinary course of business or incident to current construction for charges which (i) are not delinquent or (ii) are being contested in good faith and have not proceeded to judgment and with respect to which the Company shall have set aside on its books adequate reserves, if such reserves are required by Accounting Requirements;

F. liens in respect of judgments or awards (i) with respect to which there exists a stay of execution pending such appeal or proceedings for review and with respect to which the Company shall in good faith currently be prosecuting an appeal or proceedings for review and shall have set aside on its books adequate reserves, or (ii) which are fully covered by insurance;

G. easements, rights-of-way, licenses and permits granted by the Company under Section 5.1D and similar rights granted by any predecessor in title of the Company;

H. easements, leases, restrictions, rights-of-way, exceptions, reservations or other rights of others in any property of the Company for streets, roads, expressways, bridges, pipes, pipe lines, railroads, towers, poles, wires, conduits, mains, metering stations, electric, electronic, optical, or other power or signal transmission and distribution lines, telecommunications and telephone lines, the removal of oil, gas, coal, minerals or other natural resources, and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and defects and irregularities in the record evidence of title of any property of the Company, to the extent that such easements, leases, restrictions, rights-of-way, exceptions, reservations, other rights, laws, defects and irregularities do not in the aggregate materially impair the use of the Trust Estate taken as a whole for the purposes for which it is held by the Company;

I. liens upon lands over which easements, licenses, permits or rights-of-way are acquired by the Company for any of the purposes specified in paragraph H of this definition, securing indebtedness neither created, assumed nor guaranteed by the Company nor on account of which it customarily pays interest;

J. leases to, or permits for occupancy by, other Persons existing at the date of this instrument affecting property owned by the Company at said date (and future modifications, renewals and extensions thereof);

K. leases to, and permits for occupancy by, other Persons entered into after the date of this instrument affecting property owned by the Company, whether acquired before or after the date of this instrument, (i) for a term of not more than ten (10) years (including any extensions or renewals) or (ii) if for a term of more than ten (10) years which do not materially impair the Company's use of the property in the conduct of its business;

L. any lien or privilege vested in any lessor, landlord, licensor, permittor or other Person for rent to become due from, or for other obligations or acts to be performed by, the Company, the payment of which rent or the performance of which other obligations or acts is required under leases, usufructs, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is (i) not delinquent or (ii) being contested in good faith and has not proceeded to judgment and with respect to which the Company shall have set aside on its books adequate reserves;

M. liens or privileges of any employees of the Company for salary or wages earned but not yet payable;

N. the burdens of any law or governmental regulation, license or permit requiring the Company to maintain certain facilities or perform certain acts as a condition of the carrying on of the System or the occupancy of or interference with any public lands or any river or stream or navigable waters;

O. any restrictions, covenants, defects or irregularities in or other deficiencies of title to any easement or rights-of-way of or used by the Company for pipe lines, telephone lines, telecommunications lines, power lines, towers, poles, wires, conduits, mains, electric transmission lines and distribution lines, substations, metering stations, signal transmission and

distribution lines or for similar purposes or appurtenances thereto, or other improvements thereon, and to any real estate of or used or to be used by the Company primarily for such easement or right-of-way purposes, if (i) the Company shall have obtained from the apparent owner of the lands or estates therein covered by any such easement or right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, (ii) the Company has power under eminent domain, or similar statutes, to remove such deficiencies, or (iii) such deficiencies may be otherwise remedied without undue effort or expense;

P. rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Company or the use thereof, or to use such property in any manner, **PROVIDED** that such rights do not materially impair the use of such property for the purposes for which it is held by the Company;

Q. any obligations or duties, affecting the property of the Company, to or established by any municipality or governmental or other public authority in connection with any franchise, grant, license or permit;

R. any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute;

S. any restrictions, including restrictions on transfer, liens or other matters arising from, permitted by, or required by, any law or governmental regulation relating to environmental matters, **PROVIDED** that such restrictions, liens or other matters do not materially impair the use of such property for the purposes for which it is held and as to any liquidated liens, the Company shall have set aside on its books adequate reserves with respect thereto;

T. reservations contained in U.S. patents;

U. slope and drainage reservations;

V. the interests of other Persons, if any, in, or the requirement to make, deposits to secure duties or public or statutory obligations, deposits to secure, or in lieu of, surety, performance, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or similar charges;

W. any lien or other matter required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Company to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with worker's compensation, unemployment insurance, retirement pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

X. any lien or other encumbrance created or assumed by the Company in connection with the issuance of debt securities the interest on which is excludable from gross income of the holder of such security pursuant to the Internal Revenue Code, as amended, for the purposes of financing or refinancing, in whole or in part, the acquisition or construction of property used or

to be used by the Company to the extent such lien covers only such acquired or constructed property and the proceeds upon the sale, transfer or exchange thereof;

Y. the pledge of current assets, in the ordinary course of business, to secure current liabilities;

Z. liens or other encumbrances securing indebtedness for the payment of which money or Defeasance Securities, maturing as to principal and interest in such amounts and at such times, as are sufficient to provide for the full and timely payment of such indebtedness shall have been irrevocably deposited in trust or escrow with the trustee or other holder of such lien, and liens on such deposited money or Defeasance Securities, **PROVIDED** that if such indebtedness is to be redeemed or otherwise prepaid prior to the stated maturity thereof, any notice requisite to such redemption or prepayment shall have been irrevocably given in accordance with the mortgage or other instrument creating such lien or other encumbrance or irrevocable instructions to give such notice shall have been given to such trustee or other holder;

AA. the undivided or other interests of other owners, and liens on such interests, in property owned in common or jointly with the Company or in which the Company has an executory or future interest, and all rights of such co-owners or joint owners in such property, including the rights of such owners in and to such property pursuant to ownership contracts or otherwise;

BB. any lien or other encumbrances of any Person arising on account of the ownership in common or jointly with the Company of an undivided or other interest in property which relate to amounts which are not due and payable, or which are being contested by the Company in good faith, and with respect to which the Company shall have set aside on its books adequate reserves;

CC. liens which have been bonded for the full amount of the obligations secured by such lien or for the payment of which the Company has deposited with the Trustee or with an escrow agent cash or other property with a value equal to the full amount of the obligations secured by such lien; and

DD. any liens or other encumbrances created by or under the Head Leases, the Restructuring Agreements or any other Operative Documents.

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

“**Place of Payment**” when used with respect to the Obligations of any series means a city or any political subdivision thereof in which the Company is by this Indenture required to maintain an office or agency for the payment of the principal of or interest on the Obligations of such series.

“**Pledged Securities**” has the meaning stated in Section 15.1.



**“Pledged Subsidiary”** means a Subsidiary of the Company at least a majority of whose outstanding Voting Stock shall at the time be deposited and pledged or required to be deposited and pledged with the Trustee.

**“Pledged Wholly-Owned Subsidiary”** means any Subsidiary of the Company, all Stock of all classes of which (other than directors’ qualifying shares required to be owned by directors under any applicable law) shall at the time be owned directly by the Company and deposited and pledged or required to be deposited and pledged with the Trustee.

**“Predecessor Obligations”** of any particular Obligation means every previous Obligation evidencing all or a portion of the same debt as that evidenced by such particular Obligation; and, for purposes of this definition, any Obligation authenticated and delivered under Section 3.8 in lieu of a lost, destroyed or stolen Obligation shall be deemed to evidence the same debt as the lost, destroyed or stolen Obligation.

**“Prior Lien”** means any mortgage, lien, security title, charge or encumbrance on or pledge of or security interest in any of the Trust Estate prior to or on a parity with the lien of this Indenture, other than Permitted Exceptions.

**“Prior Lien Obligation”** means any indebtedness and the evidence thereof, if any, secured by a Prior Lien.

**“Property Additions”** means property as to which the Company shall provide Title Evidence (which, as to Retired property, may be dated as of a date immediately prior to the Retirement) and which shall be (or, if Retired, shall have been) subject to the lien of this Indenture, which shall be properly chargeable to the Company’s fixed plant accounts under Accounting Requirements (including property acquired to replace property Retired and credited to such accounts) and which shall be acquired by the Company after the Cut-Off Date, including property in the process of construction, insofar as not reflected on the books of the Company with respect to periods on or prior to the Cut-Off Date. For purposes of this definition, property reflected as construction work in progress on the books of the Company on the Cut-Off Date shall be deemed to have been acquired by the Company after the Cut-Off Date. Property Additions need not consist of a specific or completed development, plan, betterment, addition, extension, improvement or enlargement, but may include construction work in progress and property in the process of purchase insofar as the Company owns such property.

**“Property Additions”** shall also include:

A. easements and rights-of-way that are useful for the conduct of the business of the Company;

B. property located or constructed (i) on, over or under public highways, rivers or other public property under permits, licenses or franchises granted by a governmental body having jurisdiction or by the law of the state in which such property is located or (ii) on, over or under other property subject to easements and rights-of-way described in paragraph A above, if the Company has the right under such permits, licenses, franchises or law under such easements or rights-of-way to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license, franchise, law,

easement or right-of-way and to remove such property at the expiration of the period covered by such permit, license, franchise, law, easement or right-of-way, or if the terms of any such permit, license franchise or law require any public authority having the right to take over such property to pay fair consideration therefor; and

C. tangible property, which would be properly chargeable to the Company's fixed plant accounts under Accounting Requirements (including property acquired to replace property Retired and credited to such accounts) if title were vested in the Company, if (i) such property itself (in addition to the Company's leasehold interest in such property) is subject to the lien of this Indenture and (ii) such property is leased to the Company.

**"Property Additions"** shall not include:

(1) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto;

(2) any Stock or indebtedness or certificates or evidences of interest therein or other securities;

(3) any property that is to remain subject to a Prior Lien (except to the extent permitted by the proviso to Section 5.2D(2)) after the granting of the related Application or such Lien is described in the Permitted Exception described in paragraph X of the definition of "Permitted Exceptions"; or

(4) except as provided in paragraph C above, any plant or system or other property in which the Company shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Company has the right to remove), of, upon or to any plant or system or other property in which the Company shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the estimated useful economic life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Trustee reasonable notice and opportunity to cure any default by the Company under such lease and not to disturb the Trustee's possession of such leasehold estate in the event the Trustee succeeds to the Company's interest in such lease upon the Trustee's exercise of any remedies under this Indenture so long as there is no default in the performance of the tenant's covenants contained therein.

**"Qualified EPC Contract"** means any contract providing for the engineering, procurement or construction of generation or related facilities (including electric transmission and fuel supply facilities) intended to be owned by the Company, progress payments under which are used as the basis for (i) loans or advances under Conditional Obligations under Section 4.6 or (ii) the authentication and delivery of Obligations under Section 4.9.

**"Rates"** has the meaning stated in Section 13.14.

**“Redemption Date”** when used with respect to any Obligation to be prepaid means the date of such prepayment and when used with respect to any Obligation to be redeemed means the date fixed for such redemption pursuant to this Indenture.

**“Redemption Price”** when used with respect to any Obligation to be prepaid means the amount of the indebtedness to be prepaid and when used with respect to any Obligation to be redeemed means the price at which such Obligation is to be redeemed pursuant to this Indenture. It includes the applicable redemption premium, if any, and any prepayment premium, surcharge, fee or penalty, but does not include installments of interest whose Stated Maturity is on or before the Redemption Date.

**“Regular Record Date”**, except as may be otherwise set forth in a Supplemental Indenture for Additional Obligations of any series or, means for the interest payable on any Interest Payment Date on the Obligations of any series, the date immediately preceding the Interest Payment Date.

**“Responsible Officer”** when used with respect to the Trustee means the chairman or vice-chairman of the board of directors of the Trustee, the chairman or vice-chairman of the executive committee of such board, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any trust officer or assistant trust officer, the controller, any assistant controller or any other authorized officer of the 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 authorized officer of the Trustee to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

**“Restructuring Agreements”** means [if needed].

**“Retired”** means, when used with respect to property, Bondable Property that, since the Cut-Off Date, has been retired, abandoned, destroyed, worn out, removed, permanently discontinued, lost through the enforcement of any liens or released, sold or otherwise disposed of free of the lien of this Indenture or taken by eminent domain or under the exercise of a right of a government authority to purchase or take the same or recorded as retired on the books of the Company or permanently retired from service for any reason, whether or not replaced, or shall have permanently ceased to be used or useful in the business of the Company, including as a consequence of the termination of any lease, whether or not recorded as retired on the books of the Company, except that, when a minor item of property has been replaced by other property of equal value and efficiency and the cost of such replacement has been charged to other than fixed property accounts such as maintenance, repairs or other similar account, the property replaced shall not be considered as Retired.

**“Retirements”** means Bondable Property that has been Retired. The “amount” of Retirements shall be computed as follows:

(b) as to property owned by the Company on the Cut-Off Date, the net book value of such property as recorded on the books of the Company as of the Cut-Off Date; and

(c) as to Property Additions, the Cost to the Company thereof or the Fair Value to the Company thereof, whichever is less, as certified to the Trustee at the time such Property Additions were certified in a Certificate as to Bondable Additions filed in accordance with Section 4.2 (estimated, if necessary, as to particular property), or if not theretofore so certified, then the Cost to the Company of such Property Additions.

In determining the amount of Retirements for any purpose under this Indenture, neither any reduction in book values of property recorded in the Company's fixed plant accounts nor the transfer of any amount appearing in any such accounts to intangible or adjustment accounts, required or arising from adjustments required to be made by any regulatory body or otherwise, nor the elimination of any amount so transferred, otherwise than in connection with the actual retirement of physical property, shall be taken into account.

“**RUS**” means the Rural Utilities Service, or any agency or other governmental body succeeding to the functions thereof relating to this Indenture and, for any period prior to the establishment of the Rural Utilities Service, the Rural Electrification Administration.

“**RUS Obligations**” shall mean those Existing Obligations identified as the “RUS Obligations” on Exhibit C.

“**Series 1983 Revenue Bond Obligations**” shall mean those Existing Obligations identified as the “Series 1983 Revenue Bond Obligations” in on Exhibit C.

“**Series 2001A Revenue Bond Obligation**” shall mean those Existing Obligations identified as the “Series 2001A Revenue Bond Obligations” on Exhibit C.

“**Special Record Date**” for the payment of any Defaulted Interest on Obligations means a date fixed by the Trustee pursuant to Section 3.7.

“**Stated Maturity**” when used with respect to any Obligation, any installment of principal thereof, or any installment of interest thereon, means the date specified in such Obligation as the date on which the principal of such Obligation or any installment thereof, or any installment of interest, is due and payable (without regard to any provisions for redemption, prepayment, declaration or acceleration, purchase or extension).

“**Stock**” means and includes all stock, shares, interests, membership interests, participations or other similar ownership, voting or other interests (however designated) in corporations, cooperatives, partnerships, joint-ventures, associations, joint-stock companies, limited liability companies, partnerships, trusts, unincorporated organizations or other types of legal entities.

“**Subsidiary**” of any specified entity means any corporation, cooperative, partnership, joint-venture, association, joint-stock company, limited liability company, partnership, trust, unincorporated organization or any other type of legal entity at least a majority of whose outstanding Voting Stock shall at the time be owned or held, directly or indirectly, by the specified entity or by one or more of its Subsidiaries.

**“Supplemental Indenture”** means any indenture supplemental hereto duly authorized in the manner provided herein.

**“System”** means all properties and interests in properties of the Company, including the Company’s interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Company’s generating plants, now existing or hereafter acquired by the Company, including any interest or participation of the Company in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to any of the foregoing or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Company and all other works, property or structures of the Company and contract rights and other tangible and intangible assets of the Company used or useful in connection with or related to any of the foregoing, including a contract right or other contractual arrangement for the long-term or short-term interconnection, interchange, exchange, pooling, heeling, transmission, purchase or sale of electric power and energy and other similar arrangements with entities having generation or transmission capabilities.

**“TIA”** or **“Trust Indenture Act”** means, as of any time, the Trust Indenture Act of 1939, or any successor statute, as amended and in force at such time.

**“Title Evidence”** means, with respect to any real property:

A. an Opinion of Counsel to the effect that the Company, or the owner-lessor of the property in the case of real property described in paragraph C of the definition of “Property Additions”, has such title, whether fairly deducible of record or based upon prescriptive rights, as in the opinion of counsel, based upon information from the Company as to the nature and duration of the use of such property, is satisfactory for the use thereof in connection with the operations of the Company, and counsel, in giving such opinion, may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Company or, based upon information from the Company as to the nature and duration of the use of such property, does not substantially impair the usefulness of such property for the purpose for which the Company intends or expects to use such property, and may base such opinion upon his own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by Persons in whom such counsel has confidence or upon certificates or guaranties of title or policies of title insurance in which he has confidence, and, without limiting the foregoing, counsel may rely solely upon an Officers’ Certificate as to matters regarding the use of such property in the operations of the Company or the usefulness of such property for the purpose for which the Company intends or expects to use such property; or

B. a mortgagee’s policy of title insurance (or a commitment to issue a mortgagee’s policy of title insurance containing only standard conditions to issuance or such other conditions to issuance as are satisfactory to the Trustee) in the amount of the Cost to the Company of the land (on the date of acquisition) included in Property Additions, issued in favor of the Trustee by

an entity authorized to insure title in the state in which the real property is located, showing the Company (or such owner-lessor) as the owner of the subject property and insuring the lien of this Indenture;

and with respect to any personal property or any other property that may constitute fixtures or real property solely as a consequence of being affixed to or erected on either (i) real property that was owned by the Company or subject to easements or rights-of-way in favor of the Company prior to the Cut-Off Date or (ii) real property that was acquired by the Company after the Cut-Off Date and as to which the Company has previously provided Title Evidence to the Trustee as described in either paragraph A or B above, an Officers' Certificate stating that the Company owns such personal property, fixtures or real property and that the Company continues to have title satisfactory for the use thereof in connection with the operations of the Company to the real property referred to in clause (i) or (ii) above, as the case may be; and, with respect to any property described in paragraph C of the definition of "Property Additions," an Officers' Certificate stating that the Company has a valid leasehold interest in, and is possessed of, such property and with respect to a leasehold interest meeting the requirements in paragraph (4) of the definition of "Property Additions", an Officer's Certificate stating that the lease complies with the requirements of clauses (i) and (ii) of paragraph (4).

**"Trustee"** means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter **"Trustee"** means such successor Trustee.

**"Trust Estate"** has the meaning stated in the Habendum to the Granting Clauses. **"Trust Moneys"** has the meaning stated in Section 6.1.

**"Uncollateralized Amount"** with respect to any Ambac Swap Obligation for any date shall mean the amount identified as the "Uncollateralized Amount" for such date under the description of each such Ambac Swap Obligation on Exhibit C.

**"Uniform Commercial Code"** means, with respect to any particular part of the Trust Estate, the Uniform Commercial Code as enacted and in effect from time to time in the state or states whose laws are treated as applying to such part of the Trust Estate.

**"Vice President"** means, when used with respect to the Company or the Trustee, any vice president, whether or not designated by a number or a word added to the title.

**"Voting Stock"** means Stock of any class or classes (however designated) having ordinary voting power for the election of a majority of the members of the board of directors (or other governing body) of a corporation or other Person, other than Stock having such power only by reason of the happening of a contingency.

**"Wholesale Power Contracts"** means, collectively, (a) the contracts and agreements (together with the amendments and supplements thereto) with the Member Cooperatives, identified on Exhibit B, together with each successor or replacement thereof, and (b) each other contract and agreement of substantially similar terms and conditions from time to time entered into between the Company and a Member Cooperative providing for the sale of electric power and energy by the Company to such Member Cooperative.

## **Section 1.2 Acts of Holders.**

A. Any request, demand, authorization, direction, notice, approval, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Company and (subject to Section 9.1) in favor of the Trustee, if made in the manner provided in this Section.

B. The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Whenever such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, and the authority of the Person executing the same, may also be proved in any manner which the Trustee deems sufficient.

C. The ownership of Obligations shall be proved by the Obligation Register.

D. Any request, demand, authorization, direction, notice, consent, approval, waiver or other Act of the Holder of any Obligation shall bind every future Holder of the same Obligation and the Holder of every Obligation issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Obligation. However, unless such Obligation is held in the Book-Entry System and the DTC letter of representation executed by the Company in connection therewith, as amended from time to time, does not permit such revocation, any such Holder or subsequent Holder may revoke by written instrument any such Act as to his Obligation or portion of an Obligation until such time as written instruments have been received by the Trustee with respect to the requisite percentage of principal amount of Obligations for the action contemplated by such instruments; **PROVIDED, HOWEVER**, that such revocation shall be effective only if the Trustee receives written notice of revocation before the date the Trustee or the Company does or suffers to be done anything in reliance on such Act.

## **Section 1.3 Notices, etc., to Trustee and Company.**

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

A. the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its principal corporate trust office, or

B. the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (except as otherwise expressly provided in Sections 8.1C and 8.1 E) if in writing and mailed, first-class postage prepaid with return receipt requested, hand-delivered or expressed overnight with proof of delivery, or via confirmed facsimile to the Company addressed to it at 201 Third Street, Henderson, Kentucky 42420, or at any other address furnished in writing to the Trustee by the Company.

#### **Section 1.4 Notices to Holders; Waiver.**

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder of such Obligations, at the address of such Holder as it appears in the Obligation Register not later than the latest date, and not earlier than the earliest date, prescribed for such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of mail service or by reason of any other cause, it shall be impossible to give such notice by mail, then such notification as otherwise provided for in Section 1.3B or as shall be specified by the Company and satisfactory to the Trustee shall constitute a sufficient notification for every purpose hereunder.

#### **Section 1.5 Form and Contents of Documents Delivered to Trustee.**

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.

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, advice of or representations by, counsel, unless such Officer knows, or in the exercise of reasonable care should know, that the certificate, opinion, advice or representations with respect to the matters upon which his certificate or opinion is based are erroneous.



Any Opinion of Counsel may be based, in so far as it relates to factual matters or matters of business judgment, upon a certificate or opinion of, advice, statements or representations by, an Officer or Officers of the Company, unless such counsel knows that the certificate, opinion, advice, statement or representation with respect to such matters is erroneous. Any Opinion of Counsel may be based upon such assumptions, be subject to such qualifications and may be stated in such language as at the time delivered is considered in the jurisdiction whose laws are covered by such opinion to be appropriate and consistent with standard practice with respect to opinions relating to such matters. In addition, in giving any Opinion of Counsel, counsel may rely upon legal opinions addressed to the Company or such counsel as appropriate and consistent with standard practice with respect to reliance on legal opinions of other counsel. Without limiting the foregoing, in giving any Opinion of Counsel with respect to matters involving title or lien priority, counsel may rely upon (i) prior opinions or certificates of counsel for the Company, regardless of to whom such opinions are addressed, and whether delivered by general counsel, special counsel or in-house counsel for the Company provided such counsel has no reason to believe such reliance is unwarranted and (ii) title insurance policies, title insurance commitments and reports, record search certificates, abstracts and other similar evidences of matters reflected in public records and of the existence of liens.

Whenever 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 as few as one document.

Whenever it is herein provided that any Independent Person's opinion or certificate shall be furnished to the Trustee, such opinion or certificate shall state that the signer has read the definition of "Independent" and that the Person furnishing such opinion or certificate is Independent within the meaning thereof.

Wherever in this Indenture, in connection with any Application, request, certificate, statement, opinion or other report to the Trustee, it is provided that the Company shall deliver any document as a condition of the granting of such Application, or as evidence of the Company's compliance with any term hereof, it is intended that the truth and accuracy, at the time of the granting of such Application or at the effective date of such request, certificate, statement, opinion or other report (as the case may be), of the facts and opinions stated in such document shall in such case be conditions precedent to the right of the Company to have such Application granted or to the sufficiency of such document. Notwithstanding anything else herein to the contrary, the validity of any action taken or Obligation issued hereunder based upon any Application, request, certificate, statement, opinion or other report shall not be affected by the truth and accuracy of such document or documents. Nothing in the immediately preceding sentence shall, however, limit any rights or remedies available to the Trustee or the Holders under this Indenture or at law or equity against the Company or any officer thereof with respect to a false or inaccurate Application, request, certificate, statement, opinion or other report other than any remedy seeking to invalidate the action so taken or Obligation issued.

Whenever a clerical, typographical, inadvertent or unintentional error or omission shall be discovered in any instrument filed with the Trustee, a new instrument in corrected form, executed as prescribed herein for that originally filed and which may bear the same date as the instrument originally filed, may be substituted therefor with the same force and effect as if the

instrument originally filed had been filed in the corrected form, or in lieu of such substitution an appropriate adjustment may be made in a like instrument filed with the Trustee after such discovery. To the extent that action has been taken hereunder which could not have been taken had the original instrument been filed in correct form, such action shall be validated and rendered effective if the substituted or adjusting instrument shall indicate that any deficiency has been fully satisfied since the filing of the original instrument.

### **Section 1.6 Compliance Certificates and Opinions.**

Upon any Application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate identifying the relevant provisions of this Indenture and stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and, an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any Application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular Application or request, no additional certificate or opinion need be furnished.

Whenever it is herein provided that any Independent Person's opinion or certificate shall be furnished to the Trustee, such opinion or certificate shall state that the signer has read the definition of "Independent" and that the Person furnishing such opinion or certificate is Independent within the meaning thereof.

Every certificate or opinion required to state that a condition or covenant provided for in this Indenture has been complied with (other than certificates provided pursuant to Section 13.12 hereof) shall include:

- A. a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;
- B. a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- C. a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and
- D. a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

The Trustee shall be entitled to rely conclusively on any such certificate or opinion as provided in Section 9.1.

### **Section 1.7 Conflict with Trust Indenture Act.**

At any time at which this Indenture is qualified or required to be qualified under the TIA, if any provision hereof limits, qualifies or conflicts with another provision hereof which is

required to be included in this Indenture by any of the provisions of the TIA, such required provision shall control.

### **Section 1.8 Effect of Headings and Table of Contents.**

The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

### **Section 1.9 Successors and Assigns.**

All covenants and agreements in this Indenture by the Company shall, subject to Section 11.2B, bind its successors and assigns, whether so expressed or not.

### **Section 1.10 Severability Clause.**

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

### **Section 1.11 Benefits of Indenture.**

Nothing in this Indenture or in the Obligations, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any separate trustee or co-trustee appointed under Section 9.14 and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

### **Section 1.12 Governing Law.**

This Indenture and the Obligations shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, provided, however, that any Obligation as to which the RUS is the Holder shall be governed by and construed in accordance with federal laws.

### **Section 1.13 Action by Credit Enhancer When Action by Holders Required.**

Notwithstanding anything herein to the contrary, except as otherwise provided in a Supplemental Indenture creating and establishing Obligations of any series or maturity within a series for which Credit Enhancement is being provided if the Credit Enhancer is not in default in respect of any of its obligations with respect to Credit Enhancement for such Obligations, the Credit Enhancer for, and not the actual Holders of, such Obligations, shall be deemed to be the Holder of such Obligations at all times for the purpose of (i) giving any approval or consent to the effectiveness of any Supplemental Indenture or to any amendment, change or modification of this Indenture which requires the written approval or consent of Holders of such Obligations; **PROVIDED, HOWEVER**, that the provisions of this clause (i) shall not apply to any change which could not be made pursuant to Section 12.2 without the consent of each Holder of Obligations affected thereby, and (ii) giving any other approval or consent, giving any notice, effecting any waiver or authorization, exercising any remedies, giving any direction or taking any other action in accordance with the provisions of this Indenture.

**Section 1.14 Bank Holidays.**

Except as specified in an Existing Obligation or in a Supplemental Indenture, if the specified date for the making of any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall be a Saturday, Sunday or legal holiday or a day on which banking institutions in the city in which is located the office from which the Trustee performs the functions to which such act or right relates are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day which is not one of the foregoing days without additional interest and with the same force and effect as if made, performed or exercised on the specified date for such payment.

**Section 1.15 Uniform Commercial Code Security Interest; Mortgage.**

(a) Uniform Commercial Code Security Interest. This Indenture is intended to be a security agreement pursuant to the Uniform Commercial Code covering any of the items or types of property included as part of the Trust Estate that may be subject to a security interest pursuant to the Uniform Commercial Code, and the Company hereby grants to the Trustee a security interest in such items or types of property. The Company will authorize and deliver to the Trustee, upon the Trustee's request, any financing statements or amendments thereof or continuation statements thereto that the Trustee may require to perfect a security interest in said items or types of property. The Company shall pay all costs of filing such instruments, and all such costs shall be secured by this Indenture.

From the date of its recording, this Indenture shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Trust Estate which are or are to become fixtures related to the real property. For this purpose, the following information is set forth:

The name and address of the Debtor is: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

Type of Debtor: Corporation

Jurisdiction of Organization: Kentucky

State Organizational No.: 25757

The name and address of the Secured Party is:

County of Secured Party's Principal Office:

Secured Party's Jurisdiction of Organization:

This Indenture covers goods which are or are to become fixtures related to the real property described on Exhibit A attached hereto.

(b) Mortgage. This Indenture is also intended to be a mortgage under, and construed in accordance with, the laws of the Commonwealth of Kentucky.

#### **Section 1.16 Maturity of Obligations.**

The maturity of the Existing Obligations is set forth in the Existing Obligations. The Stated Maturity of Additional Obligations authorized pursuant to Article V and secured by this Indenture shall be as provided in the Supplemental Indentures adopted in accordance with and pursuant to Sections 3.2 and 12.1.

#### **Section 1.17 Acceptance of Trust by Trustee.**

The Trustee accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein set forth.

#### **Section 1.18 Investment of Cash Held by Trustee.**

Any cash held by the Trustee or any Paying Agent under any provision of this Indenture shall, except as otherwise provided in Article VII, at the request of the Company evidenced by a Company Request be invested or reinvested as designated by the Company, and, unless an Event of Default shall exist, any interest or other earnings on such investments shall be paid over

promptly to the Company as received by the Trustee, free and clear of any lien, including the lien of this Indenture. Such investments shall be held subject to the same provisions hereof as was the cash used to purchase the same, but at the request of the Company evidenced by a Company Request shall be sold, in whole or in designated part, and the proceeds of such sale shall be held subject to the same provisions hereof as was the cash used to purchase the investments so sold. If such sale shall produce a net sum less than the cost of the investments so sold, the Company shall pay promptly to the Trustee or any such Paying Agent, as the case may be, such amount in cash as, together with the net proceeds from such sale, shall equal the cost of the investments so sold, and if such sale shall produce a net sum greater than the cost of the investments so sold, the Trustee or any such Paying Agent, as the case may be, shall pay over promptly to the Company an amount in cash equal to such excess, free and clear of any lien, including the lien of this Indenture, unless an Event of Default shall exist.

### **Section 1.19 Principal Amount of Facility Lessor Obligations and Ambac Swap Obligations; Principal Amount of Obligations Other than Bonds.**

Other than as provided in the succeeding sentence, the principal amount of the Facility Lessor Obligations shall be only such amount as could be demanded under the Facility Leases due and payable under the terms of such Obligations at such time. For purposes of the determination of the principal amount of Obligations Outstanding for purposes of Section 12.2 and 13.3 only, the principal amount of the Facility Lessor (E) Obligations from time to time shall be the greater of (i) the actual amount as could be demanded under the Facility Leases as due and payable under the terms of such Obligations at such time and (ii) the Equity Strip Amount under each such Facility Lessor (E) Obligation. The principal amount of any Ambac Swap Obligation from time to time shall be the greater of (i) the amount as could be demanded under the Big Rivers Swap Agreements as due and payable under the terms of such Obligation at such time and (ii) the Uncollateralized Amount under each such Ambac Swap Obligation. At any point in time, the principal amount of any Obligation not described in the prior two sentences which is in any form other than a bond shall not include any amount not advanced and then outstanding thereunder. The principal amount of any Obligation evidencing an assumption by the Company of all or a part of another obligation shall be the principal amount outstanding under such other obligation, or the portion thereof assumed pursuant to or evidenced by such Obligation. The principal amount of an Obligation in any form other than a bond shall be reduced as the principal amount of such an Obligation (or the obligation it evidences an assumption of) is paid or otherwise reduced. The Company retains the right to have such principal payments or reductions readvanced unless the Company elects to have such payments treated as principal payments or retirements for purposes of Sections 4.3, 4.6, 4.8, 6.2, 6.3 and 16.3. If any such principal payment or reduction shall not be treated as a payment or retirement because the Company has the right to have such paid or reduced amounts readvanced, once the readvance right expires or is relinquished or otherwise terminated, such principal payment or reduction shall thereupon be treated as a principal payment or retirement under such Sections. The principal amount of an Obligation in any form other than a bond may be evidenced from time to time by an Officers' Certificate delivered to the Trustee and the Holder of such Obligation. In the event the Holder objects to the principal amount of such Obligation as set forth in such Officers' Certificate by delivering a written objection to the Trustee within sixty (60) days of the Holder's receipt of such Officers' Certificate, the Trustee may require such other evidence of the principal amount of such Obligation as shall be satisfactory to the Trustee in its sole discretion. In the absence of any

such objection by the Holder, the Trustee may rely conclusively on such Officers' Certificate. Such Officers' Certificate shall contain a statement of the foregoing objection rights of the Holder and the sixty (60) day period for objection.

### **Section 1.20 RUS as Holder.**

A. As to any Obligation guaranteed or insured by the United States of America, pursuant to the Rural Electrification Act of 1936, as amended, or any other federal statute, the United States of America, acting by and through the Administrator of RUS, and not the actual payee of such Obligation, shall be, and shall have the rights of, the Holder of such Obligation for all purposes under this Indenture at all times during which such Obligation is so guaranteed or insured. The rights of RUS pursuant to this Section with respect to any such Obligation shall not be affected by whether RUS physically possesses such Obligation, and the exercise of such rights shall not require the production of any such Obligation. With respect to any such Obligation, any Obligation as to which RUS is the named payee, the Obligation Register shall show the Holder of all such Obligations to be "United States of America, acting by and through the Administrator of the Rural Utilities Service" unless and until RUS requests that the Obligation Register show a different name (including in the event RUS transfers any such Obligation). RUS may hold Obligations, and be registered as the Holder thereof, in a number of different capacities, including as provided in this Section 1.20 with respect to Obligations guaranteed or insured by the United States of America, acting by and through the Administrator of RUS, and as the named payee of Obligations evidencing loans or advances made or to be made to the Company.

B. Certain of the Existing Obligations are, and certain Additional Obligations may be, held by RUS, and are the subject of the Amended and Consolidated Loan Contract (the "**Loan Contract**") between the Company and the United States of America, acting by and through the Administrator of RUS, dated as of \_\_\_\_\_, 2008, as the same may have been or may be amended. In addition, the loans evidenced by the Obligations held by RUS were made pursuant to, and, therefore, the Company is or may be subject to, the provisions of the Rural Electrification Act of 1936, as amended, as well as other federal statutes or regulatory policies and regulations and bulletins issued by RUS from time to time (collectively, the "**Statutory Provisions**"). The rights of RUS, including the enforcement, exercise or waiver of such rights, under the Loan Contract and the Statutory Provisions are for the sole benefit of, and may be relied upon only by, RUS. No Person, including the Trustee or any Holder (other than RUS), shall have any rights or remedies under the Loan Contract or Statutory Provisions or be deemed a third party beneficiary thereof. RUS may enforce or exercise any or all its rights under the Loan Contract and/or the Statutory Provisions, or may forbear from doing so, or may waive any such rights, in RUS's sole and absolute discretion, subject only to the applicable provisions of the Loan Contract and the applicable Statutory Provisions, and neither the Trustee nor any Holder (other than RUS) shall have or assert any claims against RUS (including any challenge to the amount, validity, priority, or enforceability of the undertakings of the Company to RUS under the Loan Contract) on account of any such enforcement, exercise, forbearance or waiver of any of the rights of RUS under the Loan Contract or any of the Statutory Provisions.

**Section 1.21 Effective Date.**

Notwithstanding the date that this Indenture is executed, delivered and filed for recordation, the provisions of this Indenture shall be effective as of [\_\_\_\_\_], 2008.

**Section 1.22 Counterpart Execution.**

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**ARTICLE II**

**FORMS OF OBLIGATIONS**

**Section 2.1 Forms of Obligations Generally.**

Additional Obligations may be in the form of bonds, notes, guarantees, assumption agreements or any other undertaking for the payment of borrowed money or purchase money indebtedness. Additional Obligations of each series shall be in substantially the form set forth in the Supplemental Indenture creating such series, or in a Board Resolution establishing such series and delivered to the Trustee, or in an Officers' Certificate pursuant to a Supplemental Indenture or Board Resolution and delivered to the Trustee, in each case 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 the rules of any securities exchange or as may, consistently herewith, be determined by the Officers executing such Additional Obligations, as evidenced by their execution of such Obligations. Any portion of the text of any Additional Obligation may be set forth on the reverse or subsequent pages thereof, with an appropriate reference thereto on the face of the Additional Obligation if desired. Such Additional Obligations may be printed, lithographed, typewritten, mimeographed or otherwise produced.

**Section 2.2 Form of Trustee's Certificate of Authentication for Obligations.**

(a) The Trustee's certificate of authentication for Existing Obligations shall be in substantially the following form:

This is one of the Existing Obligations referred to in the Indenture, dated as of [\_\_\_\_\_], 2008, between Big Rivers Electric Corporation and [**Name of Trustee**].

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

By: \_\_\_\_\_  
Authorized Signatory



(b) The Trustee's certificate of authentication for Additional Obligations shall be in substantially the following form:

This is one of the Obligations referred to in the Indenture, dated as of [\_\_\_\_\_], 2008, between Big Rivers Electric Corporation and [Name of Trustee].

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

By: \_\_\_\_\_  
Authorized Signatory

### ARTICLE III

#### THE OBLIGATIONS

##### Section 3.1 Terms and Authentication of Existing Obligations.

There shall be six separate series of Existing Obligations, consisting of the Series 1983 Revenue Bond Obligations, the Series 2001A Revenue Bond Obligations, the CFC Obligations, the Facility Lessor Obligations, the Ambac Swap Obligations and the RUS Obligations, which the Trustee shall authenticate upon presentation thereof to the Trustee by the Holders thereof. Such authentication shall be by execution of a certificate in substantially the form set forth in Section 2.2(a) which may be set forth either on the Existing Obligation or on an allonge affixed to an Existing Obligation. Only such Obligations authenticated by the Trustee pursuant to this Section 3.1 shall constitute Existing Obligations and be entitled to the benefits of and security of this Indenture as Existing Obligations.

The principal amount of the RUS 2008 Promissory Note Series B identified on Exhibit C shall, for purposes of voting, directing the time, place or manner or exercising any remedy, applying moneys, authenticating and delivering Additional Obligations, release of any part of the Trust Estate and for all other purposes under this Indenture, shall be the outstanding amount of such RUS 2008 Promissory Note Series B, multiplied by the applicable percentage indicated in applicable Acceleration Percentage for any such date in question identified in the description of the RUS 2008 Promissory Note Series B on Exhibit C. The terms and conditions of all other Existing Obligations, including the principal amounts, maturity dates, interest rates and payment and prepayment provisions, shall be as provided for therein.

##### Section 3.2 General Title; General Limitations; Issuable in Series.

(a) Unless specified otherwise by a Company Request, provided for in a Supplemental Indenture, the general title of all series of Additional Obligations shall be "**FIRST MORTGAGE OBLIGATIONS**," or "**FIRST MORTGAGE BONDS**".

(b) The aggregate principal amount of Additional Obligations which may be authenticated and delivered and Outstanding under this Indenture is three billion dollars

(\$3,000,000,000) unless this Indenture is amended to increase such amount. Additional Obligations shall be issued in accordance with Article IV and the provisions of any Supplemental Indenture creating any series of Additional Obligations. The Additional Obligations may be issued in one or more series as from time to time may be authorized by the Board of Directors. With respect to the Additional Obligations of any particular series, the Company may utilize the general title of Additional Obligations as provided in Section 3.2(a) or may use any other words, letters or figures as the title of that series as may be specified in a Company Request, or as provided for in a Supplemental Indenture.

(c) Any increase in the outstanding principal amount of any Existing Obligation shall be deemed an issuance of an Additional Obligation in the amount of such increase and shall, therefore, be subject to satisfying the conditions for the issuance of Additional Obligations, provided in Article IV. Without limiting the generality of the foregoing sentence, any loan or advance of funds under any Existing Obligation that constitutes a Conditional Obligation shall be subject to satisfying the conditions provided in Section 4.6.

### **Section 3.3 Terms of Particular Series.**

(a) Each series of Additional Obligations, shall be created by a Supplemental Indenture authorized by the Board of Directors and establishing the terms and provisions of such series of Additional Obligations or the method by which such terms and provisions shall be established. The several series of Additional Obligations may differ from the Existing Obligations and as between series and may differ from Existing Obligations in any respect not in conflict with the provisions of this Indenture, all as may be prescribed in the Supplemental Indenture creating such series. At the time of the creation of any series of Additional Obligations or at any time thereafter, the Company may establish provision for the following which shall be contained in the Additional Obligations:

A. the exchange or conversion of the Additional Obligations of such series, at the option of the Holders thereof, for or into new Additional Obligations of a different series or other securities;

B. a sinking, amortization, improvement or other analogous fund or for the payment of principal by installments or otherwise with respect to Additional Obligations of such series;

C. limiting the aggregate principal amount of the Additional Obligations of such series;

D. exchanging Additional Obligations of such series, at the option of the Holders thereof, for other Additional Obligations of the same series of the same aggregate principal amount of a different authorized kind or authorized denomination or denominations;

E. the authentication of Additional Obligations of such series by the Authenticating Agent;

F. providing for the issuance of Additional Obligations of such series in bearer or book-entry form;

G. specifying redemption or prepayment terms and procedures with respect to Additional Obligations of such series;

H. specifying business days, grace periods, record dates, other provisions and such covenants and/or events of default or remedies with respect to Additional Obligations of such series; and

I. any other terms of the Additional Obligations of such series, or any maturity thereof, not inconsistent with the provisions of this Indenture;

all upon such terms as the Board of Directors may determine as evidenced by a Board Resolution, or as may be set forth in the Supplemental Indenture creating any series of Additional Obligations.

All Additional Obligations of like maturity of the same series shall be substantially identical except that any series may have serial maturities and different interest rates for different maturities and except as may otherwise be provided in the Supplemental Indenture creating such series.

(b) With respect to Additional Obligations of a series subject to a Periodic Offering, the Supplemental Indenture or the Board Resolution, or Officers' Certificate pursuant to the Supplemental Indenture or Board Resolution, as the case may be, which establishes such series may provide general terms or parameters for Additional Obligations of such series and specify procedures by which such specific terms are to be established (which procedures may provide for authentication and delivery pursuant to oral or electronic instructions from the Company or any agent or agents thereof, which oral instructions are to be promptly confirmed electronically or in writing).

#### **Section 3.4 Denominations.**

The Additional Obligations of each series shall be issuable in such denominations as shall be provided for in the Supplemental Indenture creating such series. In the absence of any such provision with respect to the Additional Obligations of any particular series, the Additional Obligations of such series shall be in the denomination of \$1,000 or any integral multiple thereof.

#### **Section 3.5 Execution, Authentication, Delivery and Dating.**

The Additional Obligations shall be executed on behalf of the Company by its President, its General Manager, one of its Vice Presidents, its Secretary or its Treasurer, or such other Officer who may be designated by a Board Resolution to execute the Additional Obligations, and, if required by a Board Resolution, attested by its Secretary or one of its Assistant Secretaries. The signature of any of these Officers on the Additional Obligations may be manual or facsimile. Additional Obligations bearing the manual or facsimile signatures of individuals who were at any time the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the authentication and delivery of such Additional Obligations or shall not have held such offices at the date of such Additional Obligations.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Additional Obligations executed by the Company to the Trustee for authentication, together with a Company Request for the authentication and delivery of such Additional Obligations, and the Trustee shall authenticate and deliver such Additional Obligations as provided in this Indenture and not otherwise.

All Additional Obligations shall be dated as provided in the Supplemental Indenture creating such Additional Obligations or, in the absence thereof, the date of their authentication.

No Obligation shall be secured by, or be entitled to any lien, right or benefit under, this Indenture or be valid or obligatory for any purpose, unless there appears on such Obligation (or an allonge thereto) a certificate of authentication substantially in the form provided for herein, executed by the Trustee or the Authenticating Agent by manual signature, and such certificate upon any Obligation (or an allonge thereto) shall be conclusive evidence, and the only evidence, that such Obligation has been duly authenticated and delivered hereunder.

### **Section 3.6 Temporary Additional Obligations.**

Pending the preparation of definitive Additional Obligations, the Company may execute and, upon Company Request, the Trustee shall authenticate and deliver, temporary Additional Obligations which are printed, lithographed, typewritten, photocopied or otherwise produced or reproduced, in any authorized denomination, substantially of the tenor of the definitive Additional Obligations in lieu of which they are issued, and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Additional Obligations may determine, as evidenced by their execution of such temporary Additional Obligations.

If temporary Additional Obligations are issued, the Company will cause the definitive Additional Obligations to be prepared without unreasonable delay. After the preparation of definitive Additional Obligations, the temporary Additional Obligations shall be exchangeable for definitive Additional Obligations upon surrender of the temporary Additional Obligations at the office or agency of the Trustee in a Place of Payment therefor, without charge to the Holder. Upon surrender for exchange of any one or more temporary Additional Obligations, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Additional Obligations of authorized denominations. Until so exchanged, temporary Additional Obligations shall in all respects be entitled to the security and benefits of this Indenture. Upon surrender for exchange, temporary Additional Obligations shall be canceled as provided in Section 3.11.

### **Section 3.7 Registration; Registration of Transfer and Exchange.**

The Company shall cause to be kept at one of the offices or agencies maintained by the Trustee a register (herein sometimes referred to as the “**Obligation Register**”) in which, subject to such reasonable regulations as it may prescribe, the Trustee shall provide for the registration of Obligations and registration of transfers and exchanges of Obligations. The Trustee is hereby appointed “**Obligation Registrar**” for the purpose of registering Obligations and transfers and exchanges of Obligations as herein provided.

Upon surrender for registration of transfer of any Obligation at the office or agency of the Trustee in a Place of Payment therefor (or the delivery of other evidence satisfactory to the Trustee of the transfer of an Obligation), the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Obligations of the same series and maturity, of any authorized denomination and of a like aggregate principal amount (in the event such Obligation is not surrendered for transfer, upon delivery to the Trustee of such satisfactory evidence of a transfer, the Obligation Registrar shall register such transfer on the Obligations Register).

Upon surrender for exchange of any Obligation at the office or agency of the Trustee in a Place of Payment thereof, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the Holder exchanging such Obligation, one or more new Obligations of the same or different series of any authorized denomination and of a like aggregate principal amount and maturity.

All Obligations surrendered upon registration of transfer or exchange provided for in this Indenture shall be promptly canceled by the Trustee and thereafter the Trustee shall retain such Obligations or destroy such Obligations and deliver a certificate of destruction to the Company.

All Obligations issued upon any registration of transfer or exchange of Obligations shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Obligations surrendered upon such registration of transfer or exchange.

Every Obligation presented or surrendered for registration of transfer or exchange shall (if so required by the Company or the Obligation Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Obligation Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration, discharge from registration, registration of transfer or exchange of Obligations, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Obligations, other than exchanges under Section 3.6, 13.6 or 15.7 not involving any transfer.

Except as provided in a Supplemental Indenture, the Company shall not be required to issue and the Obligation Registrar shall not be required (i) to register the transfer or exchange of any Obligation of any series during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption of Obligations of such series under Section 144 and ending at the close of business on the day of such mailing, or (ii) to register the transfer or exchange of any Obligation so selected for redemption in whole or in part, except the unredeemed portion of an Obligation being redeemed in part.

### **Section 3.8 Mutilated, Destroyed, Lost and Stolen Obligations.**

If (i) any mutilated Obligation is surrendered to the Trustee, or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Obligation, and there is delivered to the Company and the Trustee such security or indemnity as may be

required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Obligation has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated or in lieu of any such destroyed, lost or stolen Obligation, a new Obligation of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

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

Every new Obligation issued pursuant to this Section in lieu of any destroyed, lost or stolen Obligation shall constitute an original contractual obligation of the Company, even in the event any destroyed, lost or stolen Obligation shall be enforceable at any time by anyone, and shall be entitled to all the security and benefits of this Indenture equally and ratably with all other Outstanding Secured Obligations.

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

### **Section 3.9 Payment of Interest; Interest Rights Preserved.**

Interest on any Obligation of any series which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Obligation (or one or more Predecessor Obligations) is registered at the close of business on the Regular Record Date for such interest as specified herein, in the provisions of the Supplemental Indenture creating such series.

Any interest on any Obligation of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called “**Defaulted Interest**”) shall be payable as provided in such Obligation, or if not so provided, shall forthwith cease to be payable to the Holder on the relevant Regular Record Date solely by virtue of such Holder having been such Holder, and such Defaulted Interest may be paid by the Company, at its election, as provided in paragraphs A or B below:

A. The Company may elect to make payment of any Defaulted Interest on the Obligations of any series to the Persons in whose names such Obligations (or their respective Predecessor Obligations) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Obligation and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and at the same time the Company shall

deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this subsection provided and not to be deemed part of the Trust Estate or Trust Moneys. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen (15) days nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of an Obligation of such series at his address as it appears in the Obligation Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Obligations of such series (or their respective Predecessor Obligations) are registered on such Special Record Date and shall no longer be payable pursuant to the following paragraph B.

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

Subject to the foregoing provisions of this Section, each Obligation delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Obligation shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Obligation and each Obligation delivered upon transfer of or in exchange for or in lieu of any such other Obligation shall bear interest from the date specified in the delivered Obligation, so that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

### **Section 3.10 Persons Deemed Owners.**

Subject to the provisions of Sections 1.13 and 1.20, prior to due presentment of such Obligation for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Obligation is registered in the Obligation Register as the Holder of such Obligation for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.9) interest on such Obligation and for all other purposes whatsoever, whether or not such Obligation be overdue, and, to the extent permitted by law, neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

### **Section 3.11 Cancellation.**

All Obligations surrendered for payment, redemption, transfer, reissue, exchange or conversion, if surrendered to the Trustee, shall be promptly canceled by it, and, if surrendered to any Person other than the Trustee, shall be delivered to the Trustee and, if not already canceled,

shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Obligations previously authenticated and delivered hereunder, which the Company may have acquired in any manner whatsoever, and all Obligations so delivered shall be promptly canceled by the Trustee. No Obligation shall be authenticated in lieu of or in exchange for any Obligation canceled as provided in this Section, except as expressly provided by this Indenture. All canceled Obligations held by the Trustee may be destroyed and thereafter the Trustee shall deliver a certificate of destruction to the Company.

## **ARTICLE IV**

### **AUTHENTICATION AND DELIVERY OF ADDITIONAL OBLIGATIONS**

#### **Section 4.1 General Provisions.**

Additional Obligations of one or more new series, or Additional Obligations of an existing series, may from time to time be executed by the Company, and delivered to the Trustee for authentication, and thereupon such Additional Obligations shall be authenticated and delivered by the Trustee upon Company Request, upon the basis permitted by, and upon compliance with the conditions of, Section 4.2 (upon the basis of Bondable Additions), Section 4.3 (upon the basis of retirement or defeasance of, or principal payments on, Obligations), Section 4.4 (upon the basis of Deposited Cash), Section 4.7 (in connection with Credit Enhancement Obligations) and Section 4.9 (upon the basis of Certified Progress Payments) upon receipt in each case by the Trustee of the following (except to the extent such Sections provide otherwise) upon or prior to the date of the initial issuance of such Additional Obligations:

A. A Board Resolution authorizing and requesting the authentication and delivery under one or more Sections of this Article from time to time or at any time of a specified principal amount of Additional Obligations of a designated series.

B. An Officers' Certificate, dated within thirty (30) days of the date of the Application for the authentication and delivery of the initial issuance of such Additional Obligations, stating that:

- (1) no Event of Default exists,
- (2) none of the Trust Estate is subject to any Prior Lien other than Prior Liens permitted by Section 13.6, and
- (3) the conditions precedent provided for in this Indenture relating to the authentication and delivery of the initial issuance of such Additional Obligations have been complied with (and, in the event such Additional Obligations are subject to a Periodic Offering, that the statements made in such Officers' Certificate shall be deemed remade at the time of each subsequent authentication and delivery of such Additional Obligations).



C. An Opinion of Counsel

(1) specifying the certificate or other evidence that shows, or cash deposit that will provide for, compliance with the requirements, if any, of any tax or recording or filing law (other than fees for the recording of documents, for which no cash deposit with the Trustee shall be required) applicable to the authentication and delivery of the initial issuance of the Additional Obligations then applied for, or stating that there is no such requirement;

(2) specifying the certificate or other evidence that shows the authorization, approval or consent of or to the authentication and delivery of the initial issuance by the Company of the Additional Obligations then applied for by any federal, state or other governmental regulatory agency whose authorization, approval or consent is at the time required to be obtained by the Company, or stating that each such authorization, approval or consent has been obtained or that none is required;

(3) stating that none of the Trust Estate is subject to any Prior Lien other than Prior Liens permitted by Section 13.6, **PROVIDED**, that the opinion required by this subparagraph (3) may be limited, with respect to personal property, to that part of the Trust Estate in which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code;

(4) stating that the conditions precedent provided for in this Indenture relating to the authentication and delivery of the initial issuance of such Additional Obligations have been complied with; and

(5) stating that such Additional Obligations, when executed by the Company, authenticated and delivered by the Trustee and issued by the Company (and, in the event of Obligations subject to a Periodic Offering, when the terms of such Additional Obligations have been established as provided in the manner contemplated by this Indenture or the Supplemental Indenture under which such Additional Obligations are established) will be the legal, valid and binding obligations of the Company enforceable in accordance with their terms and the terms of this Indenture and entitled to the benefits of and secured by the lien of this Indenture equally and ratably with all other Outstanding Secured Obligations.

D. The documents and any cash deposit specified in such Opinion of Counsel, which cash deposit, if any, shall be held by the Trustee as part of the Trust Estate and applied by the Trustee for the purpose specified in such Opinion of Counsel and, to the extent that the amount of such cash deposit proves to be excessive, returned to the Company upon Company Request.

In addition, Additional Obligations of any one or more new series, or Additional Obligations of an existing series, may from time to time be executed by the Company and delivered to the Trustee for authentication, and thereupon such Additional Obligations shall be authenticated and delivered by the Trustee upon Company Request, upon the basis permitted by, and upon compliance with the conditions of, Section 4.6 (Conditional Obligations).

The Company will not apply for the authentication and delivery of Additional Obligations under this Article except for the purpose of their prompt sale, issuance or pledge or the creation of other security interests therein. In the event that the Company shall have applied for the authentication and delivery of Additional Obligations under this Article and thereafter, the Company shall not have sold, delivered or pledged, or created some other security interest in such Additional Obligations authenticated and delivered under this Article, within three (3) months after the date of their authentication, or, if such may be the case, upon the termination of such pledge of, or other security interest in, any such Additional Obligations initially pledged or subjected to a security interest, the Company shall surrender such Additional Obligations to the Trustee, whereupon such Additional Obligations, if not previously canceled, shall be canceled by the Trustee. The Additional Obligations, so surrendered shall thereafter be treated as though they had never been Outstanding. In addition, in the event that any portion of an Obligation or series of Additional Obligations shall not be advanced or issued, and the Company's right to receive and advance or issue such portion terminated to the satisfaction of the Trustee, such portion shall thereafter be treated as though it had never been Outstanding.

#### **Section 4.2 Authentication and Delivery of Additional Obligations Upon Basis of Bondable Additions.**

Additional Obligations of one or more new series, or Additional Obligations of an existing series, may from time to time be executed by the Company and delivered to the Trustee for authentication, and thereupon such Additional Obligations shall be authenticated and delivered by the Trustee upon Company Request, in an aggregate principal amount up to but not exceeding 90.91% of the Bondable Additions (as determined below) available as a basis for such authentication and delivery as shown in item 7 of the Summary of Certificate as to Bondable Additions (the "Summary") delivered to the Trustee in accordance with this Section, upon receipt by the Trustee of the documents, instruments and cash referred to in this Section.

Whenever requesting (i) the authentication and delivery of Additional Obligations under this Section, (ii) loans and advances under Conditional Obligations under Section 4.6 upon the basis of Bondable Additions, (iii) the withdrawal of Deposited Cash under Section 4.8 upon the basis of Bondable Additions, (iv) the withdrawal of Trust Moneys under Section 6.2 upon the basis of Bondable Additions, (v) the use of Bondable Additions as a basis, in whole or in part, for the release of any part of the Trust Estate under Section 4.2, (vi) the conversion of outstanding principal amounts under Section 5.10 upon the basis of Bondable Additions, the Company shall deliver to the Trustee the relevant documents and instruments (comprising the related Application) specified in the following paragraphs A through H:

A. (i) In the case of a request for the authentication and delivery of Additional Obligations, the documents and any cash deposit required by Section 4.1 and an Available Margins Certificate; (ii) in the case of a request for a loan or advance under a Conditional Obligation under Section 4.6 upon the basis of Bondable Additions, the Available Margins Certificate, Officers' Certificate and Opinion of Counsel required by Section 4.6; (iii) in the case of a request for the withdrawal of Deposited Cash under Section 4.8 upon the basis of Bondable Additions, the Company Request, Board Resolution and Officers' Certificate required by Section 4.8; (iv) in the case of a request for the withdrawal of Trust Moneys under Section 6.2, the Company Request, Board Resolution and Officers' Certificate required by Section 6.2; (v) in

the case of a request for the use of Bondable Additions as a basis for the release of any part of the Trust Estate under Section 6.2, the relevant documents required by Section 5.2 in addition to those specified in the following paragraphs B through H below, which documents may be modified under certain circumstances as stated in the proviso to Section 5.2(D)(2); and (vi) in the case of a request for the conversion of outstanding principal amounts under Section 4.10 upon the basis of Bondable Additions, the documents required by Section 4.10.

B. A Certificate as to Bondable Additions, dated not more than thirty (30) days prior to the date of the related Application, showing in substance:

(1) In the case of the first Certificate as to Bondable Additions, \$[ ] and, for each subsequent Certificate as to Bondable Additions, the balance (item 1 in the Summary), if any, of Bondable Additions stated in item 9 of the most recent Summary, if any, theretofore delivered to the Trustee, as the balance of Bondable Additions to remain after the action applied for in connection with the most recent Summary.

(2) The Amount of Property Additions (item 2 in the Summary) not described in any previous Certificate as to Bondable Additions (except that the Amount of Property Additions may include the Amount of Property Additions described in any previous Certificate as to Bondable Additions and used as a basis for the authentication and delivery of Additional Obligations surrendered to the Trustee pursuant to the last paragraph of Section 4.1 or as the basis for any portion of an Obligation or series of Obligations which has not been loaned, advanced or issued and for which the right to receive a loan, advance under or issue of such Obligation has been terminated as provided in the last paragraph of Section 4.1). With respect to such Property Additions:

(a) The Certificate shall describe in reasonable detail, and state the Cost to the Company of, such Property Additions, which may include Property Additions to be acquired in connection with the granting of the related Application which shall be considered as already acquired for the purpose of computing the Amount of Property Additions. The Certificate shall state that none of such Property Additions has been described in any previous Certificate as to Bondable Additions (except Property Additions described in any previous Certificate as to Bondable Additions and used as the basis for the authentication and delivery of Additional Obligations surrendered to the Trustee pursuant to the last paragraph of Section 4.1 or as the basis for any principal amount of an Obligation or series of Obligations which has not been loaned or advanced or an Obligation or series of Obligations which has not been issued and for which the Company's right to receive a loan or advance under or to issue such Obligation has been terminated as provided in the last paragraph of Section 4.1). Except for major individual items, such Property Additions may be grouped by major classifications then being used by the Company in the maintenance of its fixed plant accounts and may, in the case of tracts or parcels of land or easements or rights-of-way, be described by reference to the deeds through which they were acquired or to the Supplemental Indenture conveying them to the Trustee. The Certificate shall separately describe any Property Additions consisting of a major

item or an Acquired Facility or acquired and paid for in whole or in part through the transfer or delivery of securities or other property, together with a description of the kind and respective amounts of such securities or other property. The Cost to the Company shall be shown separately for each of such Property Additions which is separately described, whether described as a major item or as an Acquired Facility or as Property Additions acquired and paid for in whole or in part through the transfer or delivery of securities or other property. The Cost to the Company may be shown in the aggregate for all Property Additions grouped within each particular major classification and the Cost to the Company may be allocated among major items and major classifications by an estimate of such nature and upon such basis as the signers deem proper.

The Certificate shall also state the Fair Value to the Company, in the opinion of the Engineer or Appraiser signing such Certificate, of such Property Additions, separately for each item or group thereof for which Cost to the Company is shown separately in the Certificate; **PROVIDED, HOWEVER**, that if such Property Additions include an Acquired Facility, the Fair Value to the Company thereof shall be stated as being the amount thereof set forth in any Independent Engineer's or Independent Appraiser's Certificate required by paragraph C below. In addition the Certificate shall also state the fair market value, as stated in any Independent Appraiser's Certificate required by paragraph D below, of any securities or other property transferred or delivered to acquire or pay for any such Property Additions.

(b) The Certificate shall state that, with respect to each of such Property Additions or group thereof for which Cost to the Company is shown separately in the Certificate, the certified Amount of Property Additions is the lower of the certified Cost to the Company thereof and the certified Fair Value to the Company thereof.

(c) Nothing in this Section shall prevent the Company from certifying any Property Additions acquired by the Company during any period without certifying other Property Additions that the Company may have acquired in that or any other period, and by so doing the Company shall not lose the right so to certify later such other Property Additions.

(3) The aggregate amount of all Retirements (item 3 in the Summary) during the period from the date to which Retirements had been included in item 3 of the most recent Summary theretofore delivered to the Trustee (or, in the case of the first such Certificate, from the Cut-Off Date) to a date not earlier than the ninetieth (90th) day before the date of the related Application.

(4) The credits against Retirements (item 4 in the Summary), which shall equal, subject to the provisions of the last sentence of clause (5) below, the sum of the following:

(a) the excess of credits against Retirements carried forward from the most recent Certificate, as provided in the last sentence of clause (5) below;

(b) the aggregate amount of 100% of (i) any cash, (ii) purchase money obligations, (iii) the principal amount of retired Obligations or principal amounts paid on Obligations (which amount may not be reloaned or readvanced under such Obligations), and (iv) Bondable Additions, in each case, delivered or certified to the Trustee for use as a basis for release of any part of the Trust Estate under Section 5.2 during the period covered by clause (3) above; and

(c) all insurance moneys received by the Trustee pursuant hereto or paid to a trustee, mortgagee or other holder under a Prior Lien during the period covered by clause (3) above on account of the damage, loss or destruction of any Bondable Property.

(5) The net amount of Retirements (item 5 in the Summary) which net amount shall be determined by deducting the credits shown pursuant to clause (4) above (item 4 in the Summary) from the aggregate amount of Retirements shown pursuant to clause (3) above (item 3 in the Summary). If in any case the credits against Retirements exceed the aggregate amount of Retirements shown pursuant to clause (3) above (item 3 in the Summary), the net amount of Retirements for the purpose of this clause (5) shall be zero, but such excess of credits against Retirements shall be carried forward and used as a credit against Retirements in the next Certificate.

(6) The excess of the Amount of Property Additions (item 6 in the Summary) shown pursuant to clause (2) above (item 2 in the Summary) over the net amount of Retirements pursuant to clause (5) above (item 5 in the Summary) and such excess shall be the amount of net Bondable Additions then being certified.

(7) The sum (item 7 in the Summary) of the amount shown pursuant to clause (1) above (item 1 in the Summary) and the amount shown pursuant to clause (6) above (item 6 in the Summary), which sum is the total amount of Bondable Additions then available.

(8) The total amount of Bondable Additions (item 8 in the Summary) which are then being used, which shall equal (in any combination) (i) 110% of the aggregate principal amount of any Additional Obligations whose authentication and delivery are then being applied for under this Section, (ii) 110% of the aggregate principal amount of the loans or advances under Conditional Obligations which are then being applied for under Section 4.6, (iii) 110% of the amount of any Deposited Cash which is then being withdrawn under Section 4.8, (iv) 100% of any Trust Moneys which are then being withdrawn under Section 6.2, (v) 100% of any Bondable Additions which are then being

used as a basis for a release of any part of the Trust Estate under Section 5.2 and (vi) 110% of the outstanding principal amount then being converted under Section 4.10.

(9) The balance of the Bondable Additions (item 9 in the Summary) shown by the Certificate that will remain after the granting of the Application then being made, which shall be computed by deducting the total amount shown pursuant to clause (8) above (item 8 in the Summary) from the sum shown pursuant to clause (7) above (item 7 in the Summary).

(10) Except when converting outstanding principal amounts under Section 4.10, if any of the Property Additions described in the Certificate were acquired with Certified Progress Payments:

(a) the amount of such Property Additions acquired with Certified Progress Payments; and

(b) the aggregate principal amount of the Additional Obligations authenticated and delivered upon the basis of the Certified Progress Payments used to acquire the Property Additions certified pursuant to paragraph (a) above that has been paid, redeemed or otherwise retired or defeased under Article VIII, which shall equal at least 90.91% of the amount of Property Additions certified pursuant to paragraph (a) above.

(11) That the Property Additions described in the Certificate have not previously been certified for use as the basis for converting outstanding principal amounts under Section 4.10.

(12) That the Property Additions described in the Certificate, except such as have been Retired, are used or useful in the conduct of the business of the Company; that the allocation of the Cost to the Company of such Property Additions to each major item or classification thereof is, in the opinion of the signers, proper; that all property described in the Certificate as Property Additions qualifies as Property Additions and that the balance of the Bondable Additions to remain after the action applied for (item 9 in Summary) plus the Cost to the Company or the Fair Value to the Company, whichever is less, of uncertified Property Additions is at least equal to the aggregate amount of uncertified Retirements.

(13) That the allowances or charges, if any, for capitalized interest, taxes, engineering, legal and accounting costs and expenses, allocated administrative charges, insurance, casualties, supervisory fees and expenses and other expenses during construction (or in connection with the acquisition of Property Additions) which are included in the Cost to the Company of such of the Property Additions described in the Certificate as were constructed or acquired by or for the Company have been charged and are properly chargeable to fixed plant accounts in respect of such Property Additions in accordance with Accounting Requirements.

(14) That no portion of the Cost to the Company of the Property Additions described in the Certificate should properly have been charged to maintenance or repairs

and that no expenditures are included in the Certificate which under Accounting Requirements are not properly chargeable to fixed plant accounts.

(15) That the terms used in the Certificate which are defined herein are used as herein defined.

The Certificate as to Bondable Additions required by this paragraph B shall be subdivided into lettered or numbered paragraphs corresponding to the foregoing clauses (1) to (9), inclusive, and shall include a Summary in substantially the following form:

*Summary of Certificate as to Bondable*

*Additions No. (Number sequentially beginning with 1)*

The undersigned hereby also certify that the following is a true Summary of Certificate as to Bondable Additions:

*Start with:*

1. In the case of the first Certificate as to Bondable Additions No. 1, \$ \_\_\_\_\_, and, in the case of any subsequent Certificate as to Bondable Additions, the balance of Bondable Additions remaining after the action applied for in the next previous Certificate (Certificate No. \_\_\_\_\_)

*Then take the new gross Property Additions as shown in item 2 below:*

2. Amount of additional Property Additions now certified (none of which has been certified in any previous Certificate as to Bondable Additions) \$ \_\_\_\_\_

*Then determine the deductions for Retirements by deducting item 4 below from item 3 below to produce item 5:*

3. The aggregate amount of all Retirements \$ \_\_\_\_\_
4. The sum of the credits against Retirements \$ \_\_\_\_\_
5. The net amount of Retirements to be deducted (if less than zero, enter zero) \$ \_\_\_\_\_

*Then determine the net Bondable Additions now being certified by deducting item 5 from item 2 to produce item 6:*

6. Net Bondable Additions now being certified \$ \_\_\_\_\_

*Then add item 1 and item 6 to produce item 7:*

7. Total Bondable Additions available for the action applied for \$ \_\_\_\_\_

8. Bondable Additions now being used for the action applied for \$ \_\_\_\_\_

*Deduct item 8 from item 7 to produce item 9:*

9. Balance of Bondable Additions that will remain after the action applied for \$ \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Engineer or Appraiser)

\_\_\_\_\_  
(Accountant)

C. In case any Property Additions described in the Certificate consist of an Acquired Facility, an Engineer's or Appraiser's Certificate (which shall be given by an Independent Engineer or Independent Appraiser if the Amount of Property Additions attributed to such Acquired Facility is not less than \$1,000,000 (\$25,000 if this Indenture is qualified under the TIA) and not less than 1% of the aggregate principal amount of Obligations then Outstanding, dated within ninety (90) days prior to the date of the related Application, stating, in the opinion of the signer, the Fair Value to the Company of the Property Additions constituting such Acquired Facility, except such as have been Retired.

D. In case any Property Additions described in the Certificate have been acquired or paid for in whole or in part through the transfer or delivery of securities or other property, an Appraiser's Certificate (which shall be given by an Independent Appraiser and the fair market value of such securities as set forth in such Certificate is not less than \$1,000,000 (\$25,000 if this Indenture is qualified under the TIA) and not less than 1% of the aggregate principal amount of Obligations then Outstanding stating, in the opinion of the signer, the fair market value of such securities and other property at the time of the transfer or delivery thereof in payment for such Property Additions, which fair market value shall be deemed to be, in whole or in part, as the case may be, the Cost to the Company of such Property Additions.

E. Such Supplemental Indenture or other instruments of conveyance, transfer and assignment as may be necessary to subject to the lien of this Indenture as a part of the Trust Estate all right, title and interest of the Company in and to the Property Additions so described and an Opinion of Counsel identifying such Supplemental Indenture or other instruments of conveyance or stating that no such Supplemental Indenture or other instrument is necessary for such purpose.



F. An Opinion of Counsel, dated within five (5) days prior to the date of the Application, stating that:

(1) if such Property Additions include any property located or constructed on, over or under public highways, rivers or other public property, the Company has the right under permits or franchises granted by a governmental body having jurisdiction or by the law of the state in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period of time or for the period, if any, specified in such permit, franchise or law, and to remove such property at the expiration of the period covered by such permit, franchise or law, or that the terms of such permit, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor or the term of such permit or franchise extends beyond the useful life of such property;

(2) the Company has corporate power to own and operate such Property Additions; and

(3) the documents which have been or are therewith delivered to the Trustee conform to the requirements of this Indenture for an Application for the action applied for and, upon the basis of such Application, the conditions precedent provided for in this Indenture relating to the authentication and delivery of the Additional Obligations therein applied for, the release of any part of the Trust Estate then requested, the withdrawal of the Deposited Cash or Trust Moneys then requested or the conversion of outstanding principal amounts under Section 4.10 of Bondable Additions then requested have been complied with.

G. Title Evidence indicating that the Company has or, contemporaneously with the taking of the action applied for, will have or, in the case of property of the type described in paragraph C of the definition of "Property Additions" at the time the lien of this Indenture attached thereto, had, title to the Property Additions described in the Certificate (except Property Additions that have been Retired).

H. To the extent not otherwise covered by the Title Evidence provided pursuant to paragraph G above, an Opinion of Counsel, dated within five (5) days prior to the date of the Application, stating that (i) the Company has or, contemporaneously with the taking of action applied for, will have duly obtained any easement, right-of-way or leasehold which is described in the Certificate, subject only to Permitted Exceptions, and (ii) the Indenture is or, upon delivery of the instruments of conveyance, transfer or assignment, if any, specified therein, will be a valid lien upon all such Property Additions (except Property Additions that have been Retired), and subject only to Permitted Exceptions and Prior Liens permitted by the proviso to Section 5.2D(2); **PROVIDED**, that the opinion contained in clause (ii) above may be limited, with respect to personal property, to such Property Additions in which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code.

**Section 4.3 Authentication and Delivery of Additional Obligations Upon Basis of Retirement or Defeasance of Obligations or Principal Payments on Obligations.**

Additional Obligations of one or more new series, or Additional Obligations of an existing series, may from time to time be executed by the Company and delivered to the Trustee for authentication, and thereupon such Additional Obligations shall be authenticated and delivered by the Trustee upon Company Request, in an aggregate principal amount up to but not exceeding the aggregate principal amount of Obligations, and the aggregate amount of principal payments on Obligations, made the basis for such authentication and delivery, upon receipt by the Trustee of the following:

A. The documents and any cash deposit required by Section 4.1.

B. Obligations (other than Obligations identified in paragraph D below) authenticated and delivered under this Indenture, whether or not in transferable form, matured or unmatured, canceled or uncanceled, in an aggregate principal amount which, when added to the aggregate amount of principal payments, if any, on Obligations referred to in paragraph C below, will equal the aggregate principal amount of Additional Obligations whose authentication and delivery are then applied for under this Section; **PROVIDED, HOWEVER**, that, in lieu of delivering Obligations to the Trustee, the Company may deposit with or deliver to the Trustee any one or more of the following:

(1) cash sufficient to pay at Stated Maturity or to redeem certain specified Obligations, **PROVIDED** that, if Obligations are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made; or

(2) an Officers' Certificate, dated within five (5) days of the Application for the authentication and delivery of such Additional Obligations, stating either or both of:

(a) that cash sufficient (such sufficiency to be established by the opinion of a nationally recognized firm of Independent public accountants in a certificate signed by such firm and delivered to the Trustee) to pay or redeem certain specified Obligations (other than Facility Lessor Obligations or Ambac Swap Obligations) is then held by the Trustee in trust for such purpose and, if such Obligations are to be redeemed, that irrevocable notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(b) that certain specified Obligations (other than Facility Lessor Obligations or Ambac Swap Obligations) have been paid, redeemed or otherwise retired or have ceased to be Outstanding; or

(3) an Officers' Certificate, dated within five (5) days of the Application for the authentication and delivery of such Additional Obligations, stating that certain specified Obligations (other than Facility Lessor Obligations or Ambac Swap Obligations) have been defeased under Article VII and are no longer Outstanding.

C. An Officers' Certificate, dated within five (5) days of the Application for the authentication and delivery of such Additional Obligations, stating the aggregate amount of principal payments that have been made on specified Obligations (other than Obligations identified in paragraph D below) which, when added to the aggregate principal amount of the Obligations delivered to or with respect to which a deposit or delivery has been made with the Trustee pursuant to paragraph B above, will equal the aggregate principal amount of Additional Obligations whose authentication and delivery are then applied for under this Section; **PROVIDED, HOWEVER**, that in lieu of delivery of such Officers' Certificate, the Company may deposit with or deliver to the Trustee cash sufficient to make principal payments on the certain specified Obligations in the aggregate amount otherwise required to be stated in such Officers' Certificate.

D. An Officers' Certificate, dated within five (5) days of the Application for the authentication and delivery of such Additional Obligations, stating that the Obligations and the amount of principal payments on Obligations made the basis for the authentication and delivery of such Additional Obligations do not include:

(1) any Obligation or any principal payment on an Obligation which shall have theretofore been made, or is currently otherwise being made, the basis for the authentication and delivery of Additional Obligations (or any loan, advance thereunder or issuance thereof), the release of any part of the Trust Estate, the withdrawal or application of Deposited Cash or Trust Moneys; or

(2) any Obligation (i) whose payment, redemption or other retirement, or provision therefor, has been effected through the operation of any sinking, amortization, improvement or other analogous fund and (ii) whose use under this Article is at the time precluded by any provision of this Indenture; or

(3) any Obligation which has been surrendered upon any exchange or transfer or any Obligation in lieu of which another Obligation has been authenticated and delivered under Section 3.8; or

(4) any Obligation which, in accordance with the last paragraph of Section 4.1, is treated as though it had never been Outstanding; or

(5) any Obligation or any principal payment on an Obligation retired or paid pursuant to or by an advance or loan under an Obligation held by a Credit Enhancer and evidencing Credit Enhancement; or

(6) any Obligation authenticated and delivered on the basis of Certified Progress Payments or any principal payment of amounts outstanding under an Obligation on the basis of Certified Progress Payments unless such Obligation or principal payment has been paid, redeemed, or otherwise retired or defeased under Article VIII using the proceeds of the Additional Obligations whose authentication and delivery are then being applied for (and each such Additional Obligation, or principal amount loaned or advanced thereunder, shall be deemed to have been authenticated and delivered or, in the case of a loan or advance, made on the basis of Certified Progress Payments); or

(7) any Facility Lessor Obligation or Ambac Swap Obligation.

E. An Opinion of Counsel stating that the actions taken by the Company under this Section with respect to the delivery of documents and cash and/or Obligations to the Trustee conform to the requirements of this Indenture and that, upon the basis of the Application, the conditions precedent provided for in this Indenture relating to the authentication and delivery of the Additional Obligations therein applied for have been complied with.

F. An Available Margins Certificate.

Every Obligation received by the Trustee and on the basis of which an Additional Obligation is authenticated and delivered under this Article, if not already canceled, shall be promptly canceled and thereafter the Trustee may retain such Obligation or may destroy such Obligation as provided in Section 3.11.

#### **Section 4.4 Authentication and Delivery of Additional Obligations Upon Deposit of Cash with Trustee.**

Additional Obligations of one or more new series, or Additional Obligations of an existing series, may from time to time be executed by the Company and delivered to the Trustee for authentication, and thereupon such Additional Obligations shall be authenticated and delivered by the Trustee upon Company Request, upon receipt by the Trustee of the following:

A. The documents and any cash deposit required by Section 4.1.

B. Cash (which may be cash representing the purchase price of, or the proceeds of a loan or advance evidenced by the Additional Obligations to be authenticated and delivered under this Section 4.4) equal to the aggregate principal amount of the Additional Obligations whose authentication and delivery are then applied for under this Section (such cash being herein sometimes referred to as “**Deposited Cash**”).

C. An Opinion of Counsel stating that the documents which have been or are therewith delivered to the Trustee conform to the requirements of this Indenture and that, upon the deposit of an amount of cash equal to the aggregate principal amount of the Additional Obligations whose authentication and delivery are then applied for, the conditions precedent provided for in this Indenture relating to the authentication and delivery of such Additional Obligations shall have been complied with.

D. An Available Margins Certificate.

#### **Section 4.5 [Intentionally omitted.]**

#### **Section 4.6 Authentication and Delivery of Conditional Obligations; Loans or Advances Thereunder.**

Conditional Obligations are Additional Obligations authenticated and delivered as provided in this Section, and under which no principal amount is outstanding thereunder at the

time of such authentication and delivery. For the avoidance of doubt, the Facility Lessor Obligations and the Ambac Swap Obligations are not Conditional Obligations.

Conditional Obligations of one or more new series, or Conditional Obligations of an existing series, may from time to time be executed by the Company and delivered to the Trustee for authentication, and thereupon such Conditional Obligations shall be authenticated and delivered by the Trustee upon Company Request, upon receipt by the Trustee of the documents and cash deposit, if any, specified in paragraphs A, B, C and D of Section 4.1 (except that the Officers' Certificate and Opinion of Counsel with respect to the compliance with conditions precedent shall apply only to the conditions precedent set forth in Section 4.1).

Loans or advances under a Conditional Obligation shall only be made upon the delivery of a written certification by the Trustee under this Section. For purposes of the other Sections of this Indenture, each loan or advance under a Conditional Obligation shall be treated as though an Additional Obligation in an aggregate principal amount equal to the amount of the loan or advance was being authenticated and delivered under the applicable Section of this Indenture referred to in paragraph A below, and all references to Additional Obligations so authenticated and delivered shall include loans or advances made under Conditional Obligations on the same basis. Upon Company Request, the Trustee shall deliver to the Company a written certification upon receipt by the Trustee of the following:

A. Either (i) the relevant documents specified in paragraphs B through H, inclusive, of Section 4.2, (ii) the relevant documents, Obligations or principal payments on Obligations specified in paragraphs B, C, D and E of Section 4.3, or (iii) the relevant documents specified in paragraphs C through E, inclusive, of Section 4.9 (in each case with such omissions and variations as are appropriate in view of the fact that such Sections are being used as the basis for loans or advances under Conditional Obligations rather than the authentication and delivery of Additional Obligations), which documents would permit the authentication and delivery of Additional Obligations in an aggregate principal amount equal to such requested loan or advance.

B. An Available Margins Certificate.

C. An Officers' Certificate and an Opinion of Counsel each stating that the conditions precedent provided for in this Indenture for the Trustee to deliver a written certificate with respect to such loan or advance have been complied with.

For the purposes of (i) receiving payment on Conditional Obligations, whether at Stated Maturity, upon redemption or if the principal of all Obligations is declared immediately due and payable following an Event of Default, as provided in Section 8.1 of this Indenture, or (ii) computing the principal amount of such Conditional Obligations in connection with any exercise of remedies or Act on the part of the Holder thereof, the principal amount of such Conditional Obligations shall equal the aggregate of the amounts loaned or advanced to, or on behalf of, the Company thereunder, less any repayments thereof.

Each written certification required to be delivered by the Trustee under this Section shall state that the Trustee has received the relevant documents specified in paragraphs A through C

above and the amount of the loan or advance permitted under this Section by virtue of the delivery of such documents.

#### **Section 4.7 Authentication and Delivery of Credit Enhancement Obligations.**

Additional Obligations of one or more new series, or Additional Obligations of an existing series (“Credit Enhancement Obligations”), may from time to time be executed by the Company and delivered to the Trustee for authentication, and such Credit Enhancement Obligations shall be authenticated and delivered by the Trustee upon Company Request, in connection with the authentication and delivery of any Additional Obligations pursuant to Section 4.2, 4.3, 4.4, 4.5, 4.6 or 4.9, for the purpose of evidencing the Company’s obligation to repay amounts paid by the Credit Enhancer on an Additional Obligation or any loan or advance made to, or on behalf of, the Company (and related interest, fees, charges and other amounts) in connection with Credit Enhancement or liquidity support of the Additional Obligations in connection with which the Credit Enhancement Obligations are authenticated and delivered; **PROVIDED, HOWEVER**, that the stated maximum principal amount of any such Credit Enhancement Obligations shall not exceed the aggregate principal amount of the Obligations with respect to which such Credit Enhancement or liquidity support is being provided, plus an amount equal to such number of days’ interest thereon as the Company shall determine (but in no event in excess of 180 days) in connection with (as provided in the Supplemental Indenture) the issuance thereof computed at the maximum interest rate applicable thereto, and the Credit Enhancement Obligation may also evidence the Company’s obligation to pay related fees and other charges related thereto or the enforcement thereof. Except as otherwise provided in a Supplemental Indenture, for the purposes of (i) receiving payment on a Credit Enhancement Obligation, whether at Stated Maturity, upon redemption or if the principal of all Obligations is declared immediately due and payable following an Event of Default, as provided in Section 9.1 of this Indenture, or (ii) computing the principal amount of any Credit Enhancement Obligation in connection with any Act on the part of the Holder, the principal amount of a Credit Enhancement Obligation shall be the actual principal amount that the Company shall owe thereon at the time as a consequence of payments made or loans or advances to or for the account of the Company. The proceeds of any payment pursuant to, or any loan or advance under, any Credit Enhancement Obligation shall be used solely for the payment of the related Obligation or for the enforcement of, or protection of the security for, such Credit Enhancement Obligation, and for other related fees and charges.

#### **Section 4.8 Withdrawal and Payment of Deposited Cash.**

Until applied as provided in a Company Request as provided in this Section, the Trustee shall hold all Deposited Cash as a part of the Trust Estate. Upon any sale of the Trust Estate or any part thereof under Article IX, any Deposited Cash then held by the Trustee shall be applied in accordance with Section 8.7; but, prior to the date of any such sale, all or any part of the Deposited Cash shall be applied by the Trustee from time to time as provided in this Section.

From time to time, whenever the Company may be entitled to the authentication and delivery of Additional Obligations under Section 4.2 (upon the basis of Bondable Additions) or under Section 4.3 (upon the basis of retirement or defeasance of, or principal payments on, Obligations), the Trustee shall (in lieu of authenticating and delivering Additional Obligations)

pay to or as directed by the Company upon Company Request, and the Company shall be entitled to withdraw and receive or direct payment of, Deposited Cash in an amount equal to the principal amount of the Additional Obligations to whose authentication and delivery the Company would be entitled, upon receipt by the Trustee of the following:

A. A Board Resolution requesting the withdrawal and payment to, or as directed by, the Company of Deposited Cash.

B. An Officers' Certificate, dated within five (5) days of the date of the Application for such withdrawal and payment, stating that no Event of Default exists and that the conditions precedent provided for in this Indenture relating to such withdrawal and payment have been complied with.

C. In the case of an Application for the withdrawal and payment of Deposited Cash upon the basis of Bondable Additions, the additional documents specified in Section 4.2 (other than an Available Margins Certificate) for delivery whenever requesting the use of Bondable Additions as a basis for such withdrawal of Deposited Cash under this Section.

D. In the case of an Application for the withdrawal and payment of Deposited Cash upon the basis of the retirement or defeasance of, or principal payments on, Obligations, the documents, Obligations or principal payments on Obligations specified in paragraphs B, C, D and E of Section 4.3 for delivery to the Trustee (with such omissions and variations as are appropriate in view of the fact that the Application requests the withdrawal and payment of Deposited Cash and not the authentication and delivery of Additional Obligations), together with an Opinion of Counsel stating that the conditions precedent provided for in this Indenture relating to such withdrawal and payment of Deposited Cash have been complied with.

#### **Section 4.9 Authentication and Delivery of Additional Obligations Upon Basis of Certified Progress Payments.**

Additional Obligations of one or more new series, or Obligations of an existing series, may from time to time be executed by the Company and delivered to the Trustee for authentication, and thereupon such Obligations shall be authenticated and delivered by the Trustee upon Company Request, in an aggregate principal amount up to but not exceeding 90.91% of the Certified Progress Payments made the basis for such authentication and delivery, upon receipt by the Trustee of the following:

A. The documents and any cash deposit required by Section 4.1.

B. An Available Margins Certificate.

C. An Officers' Certificate, dated within five (5) days of the relevant Application for the authentication and delivery of Additional Obligations, stating:

(1) the total amount of Certified Progress Payments which are then being made the basis for the authentication and delivery of Additional Obligations, which shall equal 110% of the aggregate principal amount of Additional Obligations whose authentication and delivery are then being applied for under this Section;

(2) that the sum of (i) the aggregate principal amount of all Additional Obligations then Outstanding that were originally authenticated and delivered on the basis of Certified Progress Payments to the extent such principal amount has not been converted under Section 5.10 plus (ii) the aggregate principal amount of the Additional Obligations whose authentication and delivery are then being applied for under this Section does not exceed 40% of the sum of (a) the aggregate principal amount of all Obligations then Outstanding plus (b) the aggregate principal amount of the Additional Obligations whose authentication and delivery are then being applied for under this Section; and

(3) that the Certified Progress Payments then being made the basis for the authentication and delivery of Additional Obligations do not include any Certified Progress Payments which shall have theretofore been made, or are otherwise currently being made, the basis for the authentication and delivery of Additional Obligations (or any advance or issuance thereunder).

D. Unless delivery is waived by the Holders of not less than a majority in aggregate principal amount of the Obligations then Outstanding, a Performance Agreement that (i) names the Company and Trustee as obligees, indemnitees or beneficiaries, (ii) contains a stated penal sum or other amount payable thereunder in an amount not less than the Qualified EPC Contract price; (iii) covers the applicable Qualified EPC Contract under which the Certified Progress Payments then being certified for use as the basis for the authentication and delivery of Additional Obligations have been made, and (iv) is issued by a Person qualified to issue such Performance Agreement and who possesses an A.M. Best Company rating of "A-" or better or an equivalent rating from another Person providing such rating services

E. An Opinion of Counsel stating that the applicable Qualified EPC Contract is part of the Trust Estate and that the actions taken by the Company under this Section with respect to the delivery of documents to the Trustee conforms to the requirements of this Indenture and that, upon the basis of the Application, the conditions precedent provided for in this Indenture relating to the authentication and delivery of the Additional Obligations therein applied for have been complied with.

F. Prior to filing the Officers' Certificate specified in paragraph C above, the Company shall provide written notice to each Rating Agency then rating the Company or any of the Obligations. Such written notice shall specify (i) the principal amount of Additional Obligations whose authentication and delivery is to be requested; (ii) the terms of any sinking, amortization, improvement or other analogous fund or the terms of any provision for the payment of principal by installments or otherwise with respect to such Additional Obligations; and (iii) the completion date, or the terms for establishing the completion date, under the related Qualified EPC Contract. In addition, until such completion date, the Company shall promptly deliver to each such rating agency quarterly financial statements, including a statement of income, a balance sheet, a statement of cash flows and a computation of the Margins for Interest Ratio for the twelve month period ending on the last day of such quarter.

G. In the event the Company requests the authentication and delivery of Conditional Obligations under Section 4.6, under which loans or advances are to be made on the basis of



Certified Progress Payments as provided in Section 4.6A(v), the required prior written notice to rating agencies shall be given prior to the authentication and delivery of the Conditional Obligations under Section 4.6 and shall not be required at the time of delivery of the Officers' Certificate in connection with each loan or advance.

#### **Section 4.10 Conversion of Additional Obligations.**

From time to time, upon Company Request, all or a portion of the principal amount outstanding under Additional Obligations originally authenticated and delivered upon the basis of Certified Progress Payments under Section 4.9 or under Additional Obligations, under which loans or advances were made upon the basis of Certified Progress Payments under Section 4.9, shall be converted to principal amounts outstanding under Additional Obligations deemed to have been authenticated and delivered upon the basis of Bondable Additions under Section 4.2, in an aggregate principal amount up to but not exceeding 90.91% of Bondable Additions acquired with the proceeds of Certified Progress Payments and made the basis for such conversion as shown in item 8 of the Summary of Certificate as to Bondable Additions delivered to the Trustee under this Section, upon receipt by the Trustee of the following:

A. The relevant documents specified in paragraphs B through H, inclusive, of Section 4.2 for delivery to the Trustee whenever requesting the use of Bondable Additions as the basis for converting principal amounts outstanding under Additional Obligations under this Section.

B. An Officers' Certificate, dated within five (5) days of the relevant Application requesting the conversion of principal amounts outstanding under Additional Obligations under this Section, stating that:

- (1) no Event of Default exists;
- (2) the conditions precedent provided for in this Indenture relating to such conversion have been complied with; and
- (3) identifying the Additional Obligations all or a portion of the principal amount of which is to be converted under this Section and specifying the principal amount to be converted.

C. An Opinion of Counsel stating that the documents which have been or are therewith delivered to the Trustee conform to the requirements of this Indenture, and that, upon the basis of the Application, the conditions precedent provided for in this Indenture relating to the conversion of principal amounts outstanding under Additional Obligations under this Section have been complied with.

Upon compliance with the foregoing provisions of this Section, the principal amount outstanding under Additional Obligations specified in the Officers' Certificate delivered to the Trustee pursuant to paragraph B above shall be converted. By virtue of such conversion, and notwithstanding any other provision of this Indenture, (i) such specified principal amount shall be deemed always to have been outstanding under Additional Obligations authenticated and delivered under Section 4.2 and never to have been outstanding under Additional Obligations

upon the basis of Certified Progress Payments and (ii) Property Additions acquired with Certified Progress Payments made the basis for the authentication and delivery of such specified principal amount so converted shall be deemed never to have been acquired with Certified Progress Payments.

## ARTICLE V

### UTILIZATION AND RELEASES OF TRUST ESTATE

#### **Section 5.1 Right of Company to Possess, Utilize and Operate Trust Estate; Releases and Dispositions without Release.**

So long as no Event of Default shall exist, subject only to the express limitations of this Indenture, the Company shall have the right to (i) possess, use, manage, operate and enjoy the Trust Estate (other than any cash and securities constituting part of the Trust Estate that are deposited with the Trustee), (ii) use and consume such materials, equipment, fuel and supplies as may be necessary or appropriate to generate, transmit and distribute electricity or operate the System; (iii) collect, receive, use, make payments from, transfer, invest, otherwise utilize or employ amounts constituting or derived from the rents, issues, tolls, earnings, profits, revenues, products and proceeds from the Trust Estate or the operation of the property constituting part of the Trust Estate; (iv) freely and without restriction on the part of the Trustee or of the Holders, explore for, gather, cut, mine and produce crops, timber, coal, ore, gas, oil, minerals or other natural resources and products, and to use, consume and dispose of any thereof; (v) in the ordinary course of business alter, repair and change the position or location of any of its lines, railroads, mines, mills, warehouses, buildings, works, structures, machinery, equipment and other property, **PROVIDED** that such alterations, repairs or changes shall not materially diminish the value thereof or impair the lien of this Indenture thereon; and (vi) deal with, exercise any and all rights under, receive and enforce performance under, modify or amend, and adjust and settle all matters relating to choses in action, leases, contracts and other agreements.

Without limiting the rights of the Company set forth in the preceding paragraph of this Section or otherwise, the Company shall have the right, at any time and from time to time, if no Event of Default shall exist, freely and without restriction on the part of the Trustee or of the Holders, and without any release from or consent by the Trustee,

A. to sell, exchange or otherwise dispose of, free and clear of the lien of this Indenture, any or all machinery, equipment, furniture, apparatus, tools or implements, materials or supplies or other property subject to the lien hereof, which shall have become old, inadequate, obsolete, worn out, unfit, unadaptable, unserviceable, undesirable or unnecessary for use in the operations of the Company, upon substituting for the same other machinery, equipment, furniture, apparatus, tools or implements, materials or supplies or other similar property not necessarily of the same character but of at least equal value to the Company as the property disposed of, which shall forthwith become, without further action, subject to the lien of this Indenture; and no purchaser of any such property shall be bound to inquire into any question affecting the right of the Company to sell or otherwise dispose of the same free and clear of the lien of this Indenture;

B. to abandon, terminate, cancel or release, free and clear of the lien of this Indenture, or amend, make alterations in or substitutions for any lease, contract, easement, right-of-way or other agreement subject to the lien hereof, **PROVIDED** that any amended, altered or substituted lease, contract, easement, right-of-way or other agreement shall forthwith, without further action, become subject to the lien of this Indenture to the same extent as those previously existing and **PROVIDED FURTHER** that, if the Company shall receive any money or property as consideration or compensation for such abandonment, termination, cancellation, release, amendment, alteration or substitution, such money (to the extent it exceeds \$100,000 per abandonment, termination, cancellation, release, amendment, alteration or substitution) or property, promptly upon its receipt by the Company, shall be deposited with the Trustee (unless otherwise required by a Prior Lien) or otherwise subjected to the lien of this Indenture;

C. to surrender, free and clear of the lien of this Indenture, or modify any franchise, right (charter and statutory), license or permit subject to the lien hereof which it may own or hold or under which it may be operating, **PROVIDED** that, in the opinion of the Board of Directors or an Officer of the Company, the preservation of such franchise, right, license or permit is no longer reasonably necessary, or with respect to any modification, that such modification is desirable, in the conduct of the business of the Company, **PROVIDED FURTHER** that the exercise of the right of any governmental authority, municipality or other political subdivision to terminate a franchise, right, license or permit shall not be deemed to be a surrender or modification of the same, and **PROVIDED FURTHER** that, if the Company shall receive any money or property as consideration or compensation for such surrender or modification, such money (to the extent it exceeds \$100,000 per surrender or modification) or property, promptly upon its receipt by the Company, shall be deposited with the Trustee (unless otherwise required by a Prior Lien) or otherwise subjected to the lien of this Indenture;

D. to grant rights-of-way, easements, licenses and permits over or in respect of any property constituting part of the Trust Estate, or release or cancel rights-of-way, easements, licenses and permits constituting part of the Trust Estate, free and clear of the lien of the Indenture, **PROVIDED** that, in the opinion of the Board of Directors or an Officer of the Company, no such grant will in any material respect impair the usefulness of such property in the conduct of the Company's business and such release or cancellation does not affect any right-of-way, easement, license or permit that is reasonably necessary to the operation of the Company's business, and **PROVIDED FURTHER** that, if the Company shall receive any money or property as consideration or compensation for any such grant, release or cancellation, such money (to the extent it exceeds \$100,000 per grant, release or cancellation) or property, promptly upon its receipt by the Company, shall be deposited with the Trustee (unless otherwise required by a Prior Lien) or otherwise subjected to the lien of this Indenture;

E. to demolish, dismantle, tear down, use for scrap or abandon any property constituting part of the Trust Estate, free and clear of the lien of this Indenture, if, in the opinion of the Board of Directors or an Officer of the Company, such demolition, dismantling, tearing down, scrapping or abandonment is desirable in the conduct of the business of the Company and the value and utility of the Trust Estate as an entirety will not thereby be materially impaired;

F. to alter, repair, replace, change the location or position of and add to its plants, structures, machinery, systems, equipment, fixtures and appurtenances, **PROVIDED** that no

change shall be made in the location of any such property subject to the lien of this Indenture which would remove such property into a jurisdiction if this Indenture and any required financing or continuation statement covering security interests in such property have not been recorded, registered or filed in the manner required by law to preserve the lien of this Indenture on such property or which would otherwise in any material respect impair the lien of this Indenture with respect to such property;

G. to deal in, sell, dispose of or otherwise use inventory which is subject to the lien of this Indenture in the ordinary course of the Company's business, and to collect or liquidate accounts which are subject to the lien of this Indenture in the ordinary course of the Company's business; and

H. to sell, lease, sublease or otherwise dispose of any property constituting part of the Trust Estate, subject to the lien of this Indenture, **PROVIDED** that the Company shall maintain possession and control of such property pursuant to a lease or sublease meeting the requirements of paragraph C of the definition of "Property Additions."

The Trustee shall, from time to time, execute a written instrument to evidence and confirm any action taken by the Company under this Section, upon receipt by the Trustee of (i) a Board Resolution or Officers' Certificate requesting the same and expressing any required opinions, (ii) an Officers' Certificate stating that no Event of Default exists and that said action was duly taken in conformity with a designated paragraph of this Section, and (iii) an Opinion of Counsel stating that said action was duly taken by the Company in conformity with this Section and that the execution of such written instrument by the Trustee confirms such action under this Section.

## **Section 5.2 Releases.**

The Company shall have the right, at any time and from time to time, to sell, exchange or otherwise dispose of any part of the Trust Estate free and clear of the lien of this Indenture (except cash, Pledged Securities and other personal property held by, or required to be deposited with, the Trustee hereunder) and the Trustee shall, from time to time, release property so sold, exchanged or otherwise disposed of from the lien of this Indenture, but only upon receipt by the Trustee of the items specified in this Section. The Company shall also have the right, at any time and from time to time, to have any part of the Trust Estate released from the lien of this Indenture without selling, exchanging or otherwise disposing of such part of the Trust Estate, and the Trustee shall, from time to time, release such property from the lien of this Indenture, but only upon receipt by the Trustee of the following:

A. A Board Resolution requesting such release and describing the property to be released; **PROVIDED, HOWEVER**, that no Board Resolution shall be required as to any item of property if the Officers' Certificate delivered pursuant to paragraph B below states that the value of such item of property to be released does not exceed \$5,000,000.

B. An Officers' Certificate (hereinafter called a "Release Certificate"), dated not more than thirty (30) days prior to the date of the Application for such release and signed, in the

case of the following clause (2), by an Engineer, and, in the case of the following clauses (5) and (6), by an Engineer or an Appraiser, setting forth in substance as follows:

(1) identifying the property requested to be released;

(2) that

(a) such release is desirable in the conduct of the business of the Company and such property is not reasonably necessary in the conduct of the business of the Company, or

(b) any sale, exchange or other disposition of the property has been or is to be made in lieu of reasonable anticipation of the taking of such property by eminent domain by the United States of America or a designated state, municipality or other governmental authority having the power to take such property by eminent domain, or

(c) any sale, exchange or other disposition of the property has been or is to be made in lieu of reasonable anticipation of the exercise of a right of the United States of America or a designated state, municipality or other governmental authority to purchase, or designate a purchaser or order the sale of, such property, or

(d) such release is in connection with the sale and leaseback of any property;

(3) that no Event of Default exists;

(4) that, in the opinion of the signers, the proposed release will not impair the security under this Indenture in contravention of the provisions (including those which permit such release) hereof and that all conditions precedent provided for in this Indenture relating to such release have been complied with;

(5) the fair value, in the opinion of said Engineer or Appraiser, of the property to be released at the date of the Release Certificate; and if, by virtue of clause (7) of this paragraph, any of the property to be released shall be separately described in the Release Certificate, the fair value of such property shall be separately stated; **PROVIDED, HOWEVER,** that it shall not be necessary under this clause to state the fair value of any property whose fair value is certified in an Independent Engineer's or Independent Appraiser's Certificate under paragraph C below;

(6) whether

(a) the aggregate of the fair value of the property to be released at the date of the Release Certificate and the fair value of all securities or other property released since the commencement of the then current calendar year (as previously certified to the Trustee in connection with releases) is 10% or more of the aggregate principal amount of all Obligations at the time Outstanding and whether

the fair value of the property to be released is at least \$1,000,000 (or, if this Indenture is qualified under the TIA, \$25,000) and at least 1% of the aggregate principal amount of all Obligations at the time Outstanding, or

(b) the fair value of the property to be released at the date of the Release Certificate is more than \$5,000,000.

and, if all the facts specified in either clause (a) or (b) above are present, that a certificate of an Independent Engineer or Independent Appraiser as to the fair value of the property to be released will be furnished under paragraph C below; and

(7) whether any purchase money obligations to be delivered to the Trustee or to be certified as delivered to the trustee, mortgagee or other holder of a Prior Lien under paragraph D(4) below are to be secured by a purchase money mortgage on less than all the property to be released; and, if so, the property to be covered by such purchase money mortgage shall be separately described.

C. In case it shall be stated pursuant to paragraph B(6) above that the same will be furnished, a certificate of an Independent Engineer or Independent Appraiser, dated not more than thirty (30) days prior to the date of the Application for such release, stating the fair value, in the Independent Engineer's or Independent Appraiser's opinion, at the date of the Release Certificate of the property to be released, and stating separately the fair value of any such property separately described pursuant to paragraph B(7) above and stating also that, in the opinion of the Independent Engineer or Independent Appraiser, the proposed release will not impair the security under this Indenture in contravention of the provisions hereof.

D. Cash equal to the fair value, as certified pursuant to this Section, of the property to be released; **PROVIDED, HOWEVER**, that, no cash deposit will be required if the Officers' Certificate delivered pursuant to paragraph B above states that the value of each item of property to be released does not exceed \$100,000 of the aggregate principal amount of all Obligations at the time outstanding and the value of all property released during the current calendar year under this proviso does not exceed \$5,000,000; and **PROVIDED FURTHER** that, in lieu of all or any part of such cash, the Company shall have the right to deposit and pledge with or deliver to the Trustee any of the items described in the following clauses of this paragraph:

(1) purchase money obligations secured (1) by a mortgage or similar instrument (hereinafter in this paragraph called a "mortgage") on the property to be released or the portion thereof separately described pursuant to paragraph B(7) above, maturing not more than 10 years after the date of the deposit thereof and not exceeding in principal amount 80% of the fair value of the property covered by such purchase money mortgage, as certified pursuant to paragraph B(5) or C above, which purchase money obligations and the mortgage securing the same shall be duly assigned to and deposited and pledged with the Trustee, shall be accompanied by an Officers' Certificate stating that the aggregate unpaid principal amount of all purchase money obligations received by the Trustee under this clause and then deposited and pledged with it (including those then being deposited and pledged with the Trustee), together with all those then and theretofore delivered to and then held by any trustees, mortgagees or other holders of Prior Liens under clause (4)

below, does not exceed 10% of the aggregate principal amount of all Obligations then Outstanding and shall be received by the Trustee at their principal amount in lieu of cash;

(2) whenever Bondable Additions are used as a basis, in whole or in part, for the release of any part of the Trust Estate under this Section, the relevant documents specified for delivery in paragraphs B through H, inclusive, of Section 4.2, said documents to be received by the Trustee in lieu of cash up to the Bondable Additions thereby certified; **PROVIDED, HOWEVER**, that if all the property to be released was, immediately before any sale, exchange or other disposition thereof Non-Bondable Property, subject to a Prior Lien, the Bondable Additions being used as a basis for such release may be subject to the same Prior Lien without any deduction for the Prior Lien Obligations thereby secured in computing such Bondable Additions and said documents may be modified accordingly;

(3) whenever Obligations previously or concurrently retired or defeased or principal payments on Obligations are used as a basis, in whole or in part, for the release of any part of the Trust Estate under this Section, the relevant documents and Obligations specified for delivery in paragraphs B, C, D and E of Section 4.3 (with such omissions and variations as are appropriate in view of the fact that the Obligations described therein as previously or concurrently retired or defeased or principal payments on Obligations are being used as the basis for the release of any part of the Trust Estate), said documents to be received by the Trustee in lieu of cash up to an amount equal to the principal amount of Obligations previously or concurrently retired or defeased or principal payments on Obligations and in either case not previously used as a basis for the issuance of Additional Obligations or the withdrawal of Deposited Cash;

(4) a certificate of the trustee, mortgagee or other holder of a Prior Lien on all or any part of the property to be released, stating that a specified amount of cash or a specified principal amount of purchase money obligations of the character described in clause (1) above and representing proceeds of the sale of such property have been deposited with such trustee, mortgagee or other holder pursuant to the requirements of such Prior Lien, such certificate to be received by the Trustee in lieu of cash equal to the cash and the principal amount of the purchase money obligations so certified to have been deposited with such trustee, mortgagee or other holder, **PROVIDED** there shall also be delivered to the Trustee an Officers' Certificate stating that such property to be released was subject to such Prior Lien, which shall be briefly described or otherwise identified, and that the aggregate principal amount of all purchase money obligations received by the Trustee under clause (1) of this paragraph and then deposited and pledged with it, together with all those then and theretofore delivered to and then held by any trustees, mortgagees or other holders of Prior Liens under this clause, does not exceed 20% of the aggregate principal amount of all Obligations then Outstanding;

(5) an Officers' Certificate stating that the property to be released has been subject to a specified Prior Lien or Prior Liens existing thereon immediately prior to such release, briefly describing or otherwise identifying such Prior Lien or Prior Liens, stating the principal amount of the outstanding Prior Lien Obligations secured thereby and stating that such property constitutes all the property which, immediately prior to such

release was subject to such Prior Lien or Prior Liens, said Certificate to be received by the Trustee in lieu of cash in an amount equal to the principal amount of outstanding Prior Lien Obligations so stated to be secured by such Prior Lien or Prior Liens; or

E. An Opinion of Counsel (which shall be outside counsel in the case of the opinion set forth in paragraph (2), if applicable.

(1) stating that the certificates, opinions and other instruments and/or cash and/or obligations which have been or are therewith delivered to or deposited and pledged with the Trustee conform to the requirements of this Indenture, and that, upon the basis of the Application, the conditions precedent provided for in this Indenture relating to the release from the lien of this Indenture of the property to be released have been complied with in all material respects;

(2) stating that the purchase money obligations, if any, being delivered to the Trustee or to the trustee, mortgagee or other holder of a Prior Lien are legal and binding obligations and are duly secured by a valid purchase money mortgage constituting a lien upon all the property to be released, or upon the portion thereof separately described pursuant to paragraph B(7) above, free of any Prior Liens other than any existing on the property to be released immediately prior to such release, and that the assignment to the Trustee of such purchase money obligations and the mortgage securing the same is valid and in recordable form;

(3) in case any cash or purchase money obligation shall be certified to have been deposited with the trustee, mortgagee or other holder of a Prior Lien, stating that the property to be released, or a specified portion thereof; is or immediately prior to such release was subject to such Prior Lien and that such deposit is required by such Prior Lien;

(4) in case the sale, exchange or other disposition of the property to be released shall have been certified, pursuant to paragraph B(2)(b) above, to be in lieu and reasonable anticipation of the taking of such property by eminent domain, stating that such property could lawfully have been taken by the grantee by eminent domain;

(5) in case the sale, exchange or other disposition of the property to be released shall have been certified, pursuant to paragraph B(2)(c) above, to be in lieu of reasonable anticipation of the exercise of a right to purchase, or to designate a purchaser or order the sale of, such property, stating that the designated governmental authority had, at the time of such sale or disposition, a right to purchase or designate a purchaser of such property or to order its sale; and

(6) in case an Officers' Certificate shall have been delivered to the Trustee in lieu of cash pursuant to paragraph D(4) above, stating that the property to be released, or a specified portion thereof, is or immediately prior to such release was subject to the Prior Lien or Prior Liens described or otherwise identified in said Certificate.

If any property released from the lien of this Indenture as provided in this Section shall continue to be owned by the Company after such release, this Indenture shall not become or be,



or be required to become or be, a lien on such property or any improvement, extension or addition to such property or renewals, replacements or substitutions of or for any part or parts of such property unless the Company shall execute and deliver to the Trustee a Supplemental Indenture, in recordable form, containing a grant, conveyance, transfer or mortgage thereof to the Trustee all in accordance with Section 13.5.

With respect to any property released from the lien of the Indenture as provided in this Section, the Trustee, upon Company Request, shall execute and deliver a release or other document to be recorded, registered or filed evidencing that such property is not subject to the lien of the Indenture.

### **Section 5.3 Eminent Domain.**

If any or all of the Trust Estate shall be taken by eminent domain or purchased pursuant to the right of a governmental authority to purchase or designate a purchaser for such property or to order its sale, the Trustee may release the property so taken and shall be fully protected in so doing upon being furnished with:

A. An Officers' Certificate requesting such release, describing the property to be released and stating that such property has been taken by eminent domain or purchased pursuant to the right of a governmental authority to purchase or designate a purchaser for such property or to order its sale and that the conditions precedent provided for in this Indenture relating to such release have been complied with.

B. An Opinion of Counsel stating that an order of a court of competent jurisdiction has been issued providing for the taking of such property by the exercise of the power of eminent domain or that such property has been purchased pursuant to the right of a governmental authority to purchase or designate a purchaser for such property or to order its sale, that such order or such purchase of such property has become final or an appeal therefrom is not being pursued by the Company and that the conditions precedent provided for in this Indenture relating to such release have been complied with.

C. Subject to the requirements of any Prior Lien on the property so taken, cash equal to such award or sale price.

### **Section 5.4 Written Disclaimer of Trustee.**

In case the Company proposes to sell, exchange or otherwise dispose of or has sold, exchanged or otherwise disposed of any property not subject to the lien hereof and the transferee thereof requests a written disclaimer or quitclaim by the Trustee of any interest in such property under this Indenture, the Trustee shall execute such an instrument without substitution of other property or cash upon receipt by the Trustee of the following:

A. A Company Request for the execution of such disclaimer or quitclaim.

B. An Officers' Certificate which shall identify the sale, exchange or other disposition or proposed sale, exchange or other disposition, describe the property, state that such

property is not subject to the lien of this Indenture, and state that the transferee of such property has requested a written disclaimer or quitclaim by the Trustee.

C. An Opinion of Counsel which shall state that such property is not subject to the lien of this Indenture and not then required to be subjected thereto by any provision hereof.

**Section 5.5 Powers Exercisable Notwithstanding Event of Default.**

While in possession of all or substantially all of the Trust Estate (other than any cash and securities constituting part of the Trust Estate and deposited with the Trustee), the Company may exercise the powers conferred upon it in this Article even though it would otherwise be prohibited from doing so while an Event of Default exists as provided herein, if the Trustee, in its discretion (based upon such opinions and certifications as the Trustee deems necessary), or the Holders of not less than a majority in aggregate principal amount of the Obligations then Outstanding, by Act of such Holders, shall consent to such action (such consent may be on a retroactive basis), in which event none of the instruments required to be furnished to the Trustee under this Article as a condition to the exercise of such powers need state that no Event of Default exists as provided therein.

**Section 5.6 Powers Exercisable by Trustee or Receiver.**

In case all or substantially all of the Trust Estate (other than any cash and securities constituting part of the Trust Estate and deposited with the Trustee) shall be in the possession of a trustee or receiver lawfully appointed, the powers hereinbefore in this Article conferred upon the Company with respect to the sale, exchange or other disposition and release of the Trust Estate may be exercised by such trustee or receiver (with the consent of the Trustee or Holders as specified in Section 5.5), in which case a written request signed by such receiver or trustee shall be deemed the equivalent of any Board Resolution or Company Request required by this Article and a certificate signed by such trustee or receiver shall be deemed the equivalent of any Officers' Certificate required by this Article and such certificate need not state that no Event of Default exists. If the Trustee shall be in possession of the Trust Estate under Section 8.3, such powers may be exercised by the Trustee in its discretion.

**Section 5.7 Purchaser Protected.**

No purchaser or other transferee in good faith of property purporting to be released herefrom shall be bound to ascertain the authority of the Trustee to execute the release or to inquire as to the satisfaction of any conditions herein prescribed for the exercise of such authority; nor shall any purchaser or other transferee of any property or rights permitted by this Article to be sold, exchanged or otherwise disposed of by the Company be under any obligation to ascertain or inquire into the authority of the Company to make any such sale, exchange or other disposition. Any release executed by the Trustee shall be sufficient for the purpose of this Indenture and shall constitute a good and valid release of the property therein described from the lien hereof.

**Section 5.8 Disposition of Collateral on Discharge of Prior Liens.**

Upon the cancellation and discharge of any Prior Lien, the Company will cause all cash and purchase money obligations then held by the trustee, mortgagee or other holder of such Prior Lien, which were received by such trustee, mortgagee or other holder in accordance with the provisions of this Article (including all proceeds of or substitutions for any thereof), to be paid to or deposited and pledged with the Trustee, such cash to be held and paid over or applied by the Trustee as provided in Article VII.

**Section 5.9 Disposition of Obligations Received.**

All purchase money obligations received by the Trustee under this Article shall be held by the Trustee as a part of the Trust Estate. Upon payment to the Trustee of the entire unpaid principal amount of any such obligation, the Trustee shall release and transfer such obligation and any mortgage securing the same upon Company Request. Any cash received by the Trustee in respect of the principal of any such obligation shall be held by the Trustee as Trust Moneys under Article VII subject to application as therein provided. The Trustee shall not be responsible for the collection of the principal of or interest on any such obligation. All interest and other income on any such obligation, when received by the Trustee, shall, except to any extent otherwise provided in Section 15.4, be paid from time to time to the Company upon Company Request, unless an Event of Default shall exist. If an Event of Default shall exist, any interest and other income on any such obligation not theretofore paid upon Company Request, when collected by the Trustee, shall be applied by the Trustee in accordance with Section 8.7.

**ARTICLE VI**

**APPLICATION OF TRUST MONEYS**

**Section 6.1 “Trust Moneys” Defined.**

All moneys received by the Trustee

A. upon the release of any part of the Trust Estate from the lien of this Indenture, including all moneys received in respect of the principal of all purchase money obligations, or

B. as compensation for, or proceeds of the sale of, any part of the Trust Estate taken by eminent domain or purchased by, or sold pursuant to an order of, a governmental authority or otherwise disposed of, or

C. as proceeds of insurance upon any part of the Trust Estate required to be paid to the Trustee under Section 13.8, or

D. for application under this Article as elsewhere herein provided, or whose disposition is not elsewhere herein otherwise specifically provided for,

(all such moneys being herein sometimes called “Trust Moneys”) shall be held by the Trustee, except as otherwise provided in this Article, as a part of the Trust Estate and, upon any entry upon or sale of the Trust Estate or any part thereof under Article IX, Trust Moneys shall be

applied in accordance with Section 8.7; but, prior to any such entry or sale, all or any part of the Trust Moneys may be withdrawn, and shall be paid, released or applied by the Trustee, from time to time as provided in Sections 6.2 to 6.9, inclusive, and may be applied by the Trustee as provided in Sections 9.7, 13.11 and Section 15.14.

### **Section 6.2 Withdrawal on Basis of Bondable Additions.**

Trust Moneys may be withdrawn by the Company and shall be paid by the Trustee under this Section to the Company or as otherwise specified in a Company Request, from time to time, equal to the principal amount of Bondable Additions made the basis for such withdrawal pursuant to paragraph C below, upon receipt by the Trustee of the following:

- A. A Board Resolution requesting the withdrawal and payment of Trust Moneys.
- B. An Officers' Certificate, dated not more than thirty (30) days prior to the date of the Application for the withdrawal and payment of such Trust Moneys, stating that:
  - (1) no Event of Default exists or will occur as a result of such redemption, purchase or payment; and
  - (2) the conditions precedent provided for in this Indenture relating to such withdrawal and payment have been complied with.
- C. The additional documents specified in Section 4.2 (other than an Available Margins Certificate) for delivery whenever requesting the use of Bondable Additions as a basis for the withdrawal of Trust Moneys under this Section.

### **Section 6.3 Withdrawal on Basis of Retirement or Defeasance of Obligations or Principal Payments on Obligations.**

Trust Moneys may be withdrawn by the Company and shall be paid by the Trustee under this Section to the Company or as otherwise specified in a Company Request, from time to time, equal to the principal amount of Obligations or principal payments on Obligations made the basis for such withdrawal pursuant to paragraph C below, upon receipt by the Trustee of the following:

- A. A Board Resolution requesting the withdrawal and payment of Trust Moneys.
- B. An Officers' Certificate, dated not more than thirty (30) days prior to the date of the Application for the withdrawal and payment of such Trust Moneys, stating that:
  - (1) no Event of Default exists; and
  - (2) the conditions precedent provided for in this Indenture relating to such withdrawal and payment have been complied with.
- C. The Obligations, if any, and documents which the Company would be required to furnish to the Trustee upon an Application for the authentication and delivery of Additional

Obligations under Section 4.3, except for the documents and opinions required by paragraphs A, E and F thereof.

D. An Opinion of Counsel stating that the Obligations, if any, and the documents which have been or are therewith delivered to the Trustee conform to the requirements of this Indenture, and that, upon the basis of the Application, the conditions precedent provided for in this Indenture relating to the withdrawal and payment of the Trust Moneys then requested have been complied with.

**Section 6.4 [Intentionally Omitted].**

**Section 6.5 Retirement of Obligations or Payments on Obligations.**

Trust Moneys shall be applied by the Trustee from time to time to the redemption of any Outstanding Secured Obligations that may be designated by the Company, all in accordance with the provisions applicable to redemption at the option of the Company and with any premiums applicable thereto, or to the payment of the principal of any Outstanding Secured Obligations at their Stated Maturity or to the purchase thereof upon tender or in the open market or at private sale or upon any exchange or in any one or more of said ways, or to any other payment of the principal of any Outstanding Secured Obligations that may be designated by the Company, all in accordance with the rights of the Company to make such payments and with any penalties or premiums applicable thereto, as the Company shall specify in a Company Request, upon receipt by the Trustee of the following:

A. A Board Resolution directing the application pursuant to this Section of Trust Moneys and, in case any such moneys are to be applied to the redemption of Obligations, designating the Obligations to be redeemed and stating the applicable Redemption Price, if any, or authorizing such designation and statement to be made in an Officers' Certificate, and, in case such moneys are to be applied to the purchase of Obligations, prescribing the method of purchase, the price or prices to be paid and the maximum principal amount of Obligations to be purchased or authorizing the prescription of such method, price, and maximum principal amount to be made in an Officers' Certificate, and in the case such moneys are to be applied to the payment of principal on Obligations, designating the Obligations on which such payments are to be made, specifying the amount to be paid and stating the applicable penalties or premiums, if any, or authorizing such designation, specification and statement to be made in an Officers' Certificate.

B. Cash equivalent to the maximum amount of the accrued interest and the premium or penalty, if any, required to be paid in connection with any such redemption, purchase or payment, which cash shall be held by the Trustee in trust for such purpose.

C. An Officers' Certificate, dated not more than thirty (30) days prior to the date of the relevant Application, stating that:

- (1) no Event of Default exists; and
- (2) the conditions precedent provided for in this Indenture relating to such application of Trust Moneys have been complied with.

D. An Opinion of Counsel stating that the documents and the cash, if any, which have been or are therewith delivered to and deposited with the Trustee conform to the requirements of this Indenture, and that, upon the basis of the relevant Application, the conditions precedent provided for in this Indenture relating to the application of Trust Moneys therein applied for have been complied with.

Upon compliance with the foregoing provisions of this Section, the Trustee shall apply Trust Moneys as requested by a Company Request, in an amount up to, but not exceeding, the principal amount of the Obligations so redeemed, paid or purchased, or the principal amount of the principal payments on the Obligations so made, and shall use only the cash deposited pursuant to paragraph B above, to the extent necessary, to pay any accrued interest, penalty and premium required in connection with such redemption, purchase or payment.

A Board Resolution expressed to be irrevocable directing the application of Trust Moneys under this Section to the payment of the principal of Obligations shall, for all purposes of this Indenture, be deemed the equivalent of the deposit of money with the Trustee in trust for such purpose. Such Trust Moneys and any cash deposited with the Trustee pursuant to paragraph B above for the payment of accrued interest, penalty and premium shall not, after compliance with the foregoing provisions of this Section, be deemed to be a part of the Trust Estate or Trust Moneys.

#### **Section 6.6 Withdrawal of Insurance Proceeds.**

A. To the extent that any Trust Moneys consist of proceeds of insurance upon any part of the Trust Estate, they may be withdrawn by the Company and shall be paid by the Trustee to the Company or as otherwise specified in a Company Request to reimburse the Company for the Cost to the Company to repair, rebuild or replace the property destroyed or damaged, upon receipt by the Trustee of the following:

(1) An Officers' Certificate, dated not more than thirty (30) days prior to the date of the Application for the withdrawal and payment of such Trust Moneys and signed with respect to clauses (a) and (c) below, by a Person who is an Accountant (who may be one of the two signing Officers), stating that:

(a) expenditures have been made, or costs incurred, by the Company in a specified amount for the purpose of making certain repairs, rebuildings and replacements, which shall be briefly described, and stating the amount of any such expenditures or costs for the acquisition of a major item of property, which shall be separately specified, in replacement of any destroyed or damaged property;

(b) no part of such expenditures or costs has been or is being made the basis for the authentication and delivery of Obligations or the withdrawal of any Trust Moneys or Deposited Cash or the release of any part of the Trust Estate from the lien of this Indenture or has been paid out of the proceeds of insurance upon any part of the Trust Estate not required to be paid to the Trustee under Section 13.8;

(c) there is no outstanding indebtedness, other than costs for which payment is being requested, known to the Company, after due inquiry, for the purchase price or construction of the repairs, rebuildings or replacements specified pursuant to clause (a) above, or for labor, wages, materials or supplies in connection with the making thereof, which, if unpaid, might become the basis of a vendor's, mechanics', laborers', materialmen's, statutory or other similar lien upon any of such repairs, rebuildings or replacements, which lien might, in the opinion of the signers of such Certificate, materially impair the security afforded by such repairs, rebuildings or replacements;

(d) no Event of Default exists; and

(e) the conditions precedent provided for in this Indenture relating to such withdrawal and payment have been complied with.

(2) An Engineer's or Appraiser's Certificate, dated not more than thirty (30) days prior to the date of the related Application, stating, in the opinion of the signer, the fair value to the Company of any major item of property specified in paragraph A(1) above; **PROVIDED** that if such property constitutes an Acquired Facility and if the fair value to the Company of such Acquired Facility is at least \$1,000,000 (or, if this Indenture is qualified under the TIA, \$25,000) and at least 1% of the aggregate principal amount of all Obligations at the time Outstanding, the Engineer or Appraiser shall be an Independent Engineer or Independent Appraiser.

(3) An Opinion of Counsel stating that:

(a) the documents which have been or are therewith delivered to the Trustee conform to the requirements of this Indenture, that, upon the basis of the related Application, the conditions precedent provided for in this Indenture relating to the withdrawal and payment of Trust Moneys then requested have been complied with; and

(b) the Company's right, title and interest in and to the repairs, rebuildings and replacements described in the Officers' Certificate delivered pursuant to paragraph A above are subject to the lien of this Indenture.

(4) Title Evidence indicating that the Company has acquired, or upon payment of the costs to be paid as requested will acquire, title to the repairs, rebuildings or replacements described in the Officers' Certificate delivered pursuant to paragraph A above at least equivalent to its title to the property destroyed or damaged.

Upon compliance with the foregoing provisions of this Section, the Trustee shall pay to the Company or as otherwise specified in a Company Request an amount of Trust Moneys of the character aforesaid equal to the amount of the expenditures or costs stated in such Officers' Certificate; **PROVIDED, HOWEVER**, that, in the case of expenditures or costs for the acquisition of a major item of property in replacement of any destroyed or damaged property, such expenditures or costs shall not exceed the fair value to the Company of such replacement as certified pursuant to the paragraph (2) above.

B. To the extent that any Trust Moneys consist of proceeds of insurance upon, or payable in consequence of destruction of or damage to, that portion of the Trust Estate consisting of the property (“Leased Assets”) subject to a lease (a “Capital Asset Lease”) described in paragraph C of the definition of “Property Additions” or paragraph H of Section 5.1, they shall be paid by the Trustee as specified in a Company Request to the lessor under a Capital Assets Lease or its designee, upon receipt by the Trustee of the following:

(1) An Officers’ Certificate, dated not more than thirty (30) days prior to the date of the Application for the withdrawal and payment of such Trust Moneys and signed in the case of the following clauses (b), (c) and (d) by an Engineer or Appraiser, setting forth in substance as follows:

(a) an amount is, or with an election which shall be made by the Company, will be, due and payable to the lessor under the Capital Assets Lease in respect of such destruction of, or damage to, the Leased Assets and the amount of the request for withdrawal of Trust Moneys to which such Officers’ Certificate relates does not exceed such amount;

(b) the amount of Trust Moneys to be withdrawn pursuant to such Company Request is not more than the difference between (i) the amount of proceeds of insurance received in consequence of such destruction of or damage to the Leased Assets which has theretofore been deposited with the Trustee, minus either (ii) if the Leased Assets are not to be repaired or replaced, the difference between (A) the fair value in the opinion of said Engineer or Appraiser of the Leased Assets immediately prior to the destruction or damage giving rise to the receipt of the proceeds of insurance, minus (B) the fair value in the opinion of said Engineer or Appraiser of the Leased Assets at the date of such Officers’ Certificate or (iii) if the Leased Assets are to be repaired or replaced, the cost of repair or replacement as estimated by such Engineer or Appraiser;

(c) whether

(i) the aggregate of the amount of Trust Moneys to be withdrawn in accordance with such Application and the fair value of all Trust Moneys, withdrawn pursuant to this paragraph B of this Section 6.6 or securities or other property released pursuant to Section 5.2 since the commencement of the then current calendar year (as previously certified to the Trustee in connection with withdrawals or releases) is 10% or more of the aggregate principal amount of all Obligations at the time Outstanding, and whether such amount of Trust Moneys to be withdrawn is at least \$1,000,000 (or, if this Indenture is qualified under the TIA, \$25,000) and at least 1% of the aggregate principal amount of all Obligations at the time Outstanding, or

(ii) the amount of the Trust Moneys to be withdrawn in accordance with such Application is more than \$1,000,000;



(d) that, in the opinion of the signers, the proposed withdrawal will not impair the security under this Indenture in contravention of the provisions hereof; and

(e) that no Event of Default exists.

If the facts specified in either Subclause (i) or (ii) of clause (c) above are present, such Officers' Certificate shall be accompanied by a certificate of an Independent Engineer or Independent Appraiser, dated not more than thirty (30) days prior to the date of the Application for the withdrawal and payment of Trust Moneys, to the effect set forth in clauses (b) and (d) above. Upon compliance with the foregoing provisions of this Section, the Trustee shall pay to the Person specified in a Company Request an amount of Trust Moneys of the character aforesaid equal in the amount stated in such Officers' Certificate.

#### **Section 6.7 Amounts under \$25,000.**

In case the amount of Trust Moneys at any one time received by the Trustee shall not exceed \$25,000, the same shall (unless an Event of Default exists) be paid to the Company upon Company Request; and the Company covenants and agrees that it will, within the 12 months after such Trust Moneys have been so paid to the Company, deposit and file with the Trustee the documents and Obligations, if any, which by the provisions of Sections 6.2, 6.3, 6.4, 6.6 or 6.8 would have been delivered to the Trustee to entitle the Company to have the Trust Moneys paid to it as provided in such Section, with such omissions and variations as are appropriate by reason of the fact that such Trust Moneys have theretofore been paid to the Company by the Trustee without prior compliance with such Sections. In the event that the Company shall have failed to comply with the foregoing covenant, no further payment may be made under this Section until the Company shall have deposited and filed with the Trustee the required documents and Obligations, if any.

#### **Section 6.8 Powers Exercisable Notwithstanding Default.**

While in possession of all or substantially all of the Trust Estate (other than any cash and securities constituting part of the Trust Estate and deposited with the Trustee), the Company may do any of the things enumerated in Sections 6.2 to 6.7, inclusive, which it is prohibited from doing while an Event of Default exists as provided therein, if the Trustee in its discretion (based upon such opinions and certifications as the Trustee deems necessary), or the Holders of not less than a majority in aggregate principal amount of the Obligations then Outstanding, by an Act of such Holders, shall specifically consent to such action, in which event any Officers' Certificate delivered to the Trustee under any of such Sections shall omit any statement to the effect that no Event of Default exists as provided thereunder.

#### **Section 6.9 Powers Exercisable by Trustee or Receiver.**

In case all or substantially all of the Trust Estate (other than any cash and securities constituting part of the Trust Estate and deposited with the Trustee) shall be in the possession of a receiver or trustee lawfully appointed, the powers hereinbefore in this Article conferred upon the Company with respect to the withdrawal or application of Trust Moneys may be exercised by such receiver or trustee (with the consent of the Trustee or Holders specified in Section 6.8), in

which case a written request signed by such receiver or trustees shall be deemed the equivalent of any Board Resolution or Company Request required by this Article and a certificate signed by such receiver or trustee shall be deemed the equivalent of any Officers' Certificate required by this Article and such certification need not state that no Event of Default exists. If the Trustee shall be in possession of the Trust Estate under Section 8.3, such powers may be exercised by the Trustee in its discretion.

#### **Section 6.10 Disposition of Obligations Retired.**

All Obligations received by the Trustee and on the basis of which Trust Moneys are paid or for whose payment, redemption or purchase Trust Moneys are applied under this Article, if not previously canceled, shall be promptly canceled by the Trustee and thereafter the Trustee may retain or destroy such Obligations and deliver a certificate of destruction to the Company.

### **ARTICLE VII**

#### **DEFEASANCE**

#### **Section 7.1 Termination of Company's Obligations.**

A. The Company may terminate its obligations under the Obligations and this Indenture if all Obligations previously authenticated and delivered (other than destroyed, lost or stolen Obligations which have been replaced or paid or Obligations for whose payment money or securities has theretofore been held in trust and thereafter repaid to the Company, as provided in Section 7.3) have been delivered to the Trustee for cancellation and the Company has paid all sums payable by it hereunder; or

B. Except as otherwise provided in this Section, the Company may terminate its obligations under any Obligations and all of its obligations under this Indenture to or for the benefit of the Holders of such Obligations, if:

(1) the Company has (i) in case any of such Obligations are to be redeemed on any date prior to their Stated Maturity, given to the Trustee irrevocable instructions to give as provided in Article XIV notice of redemption of such Obligations (other than Obligations which have been purchased by the Trustee at the direction of the Company as hereinafter provided prior to the giving of such notice of redemption), and (ii) irrevocably deposited or caused to be deposited with the Trustee or Paying Agent (if other than the Company), under the terms of an irrevocable trust agreement in form and substance satisfactory to the Trustee and any such Paying Agent, as trust funds in trust for the benefit of the Holders of such Obligations for that purpose, money or Defeasance Securities maturing as to principal and interest in such amounts and at such times as are sufficient (in the opinion of a nationally recognized firm of Independent public accountants expressed in a certificate signed by such firm and delivered to the Trustee), without consideration of any reinvestment of such interest, to pay principal or Redemption Price (if applicable) of, and interest due or to become due on such Obligations (other than destroyed, lost or stolen Obligations which have been replaced or paid or Obligations for whose payment money or securities has theretofore been held in

trust and thereafter repaid to the Company as provided in the second sentence of Section 7.3) on or prior to the Redemption Date or Stated Maturity thereof, as the case may be, in accordance with the terms of this Indenture and such Obligations; **PROVIDED** that the Trustee or Paying Agent shall have been irrevocably instructed to apply such money or the proceeds of such Defeasance Securities to the payment of said principal, Redemption Price and interest with respect to such Obligations;

(2) no Event of Default shall exist on the date of such deposit or shall occur as a result of such deposit;

(3) the Company has paid or caused to be paid all sums then due from the Company hereunder and under such Obligations; and

(4) the Company has delivered to the Trustee and any Paying Agent an Officers' Certificate, each stating that the conditions set forth in clauses (1) through (3) above have been complied with.

After any such irrevocable deposit, the Trustee upon Company Request shall acknowledge in writing the discharge of the Company's obligations under such Obligations and of the Company's obligations to or for the benefit of the Holders of such Obligations or under this Indenture, except for those surviving obligations specified below.

C. Notwithstanding the satisfaction of the conditions set forth in paragraph B with respect to any Obligations, the Company's obligations to or for the Holders of such Obligations or to the Trustee under Sections 3.6, 3.7, 7.2, 7.3, 7.4, 9.7, 9.10, 10.2, 13.2, 13.3 and 15.14 shall survive until such Obligations are no longer Outstanding. Thereafter, only the Company's obligations under Sections 7.3, 7.4, 9.7 and 15.14 shall survive with respect to such Holders or the Trustee.

D. The Trustee shall, if so directed by the Company (i) prior to the Stated Maturity of Obligations in respect of which a deposit has been made under paragraph B(1) above which are not to be redeemed prior to their Stated Maturity or (ii) prior to the giving of the notice of redemption referred to in paragraph B(1) above with respect to any Obligations in respect of which a deposit has been made under paragraph B(1) which are to be redeemed on a date prior to their Stated Maturity, apply moneys deposited with the Trustee in respect of such Obligations and redeem or sell Defeasance Securities so deposited with the Trustee and apply the proceeds thereof to the purchase of such Obligations and the Trustee shall immediately thereafter cancel all such Obligations so purchased; **PROVIDED, HOWEVER**, that the moneys and Defeasance Securities remaining on deposit with the Trustee after the purchase and cancellation of such Obligations shall be sufficient to pay when due the principal or Redemption Price (if applicable) of, and interest due or to become due on, all Obligations in respect of which such moneys and Defeasance Securities are being held by the Trustee on or prior to the Redemption Date or Stated Maturity thereof, as the case may be. In the event that on any date as a result of any purchases and cancellations of Obligations as provided in this paragraph the total amount of moneys and Defeasance Securities remaining on deposit with the Trustee under this Section is in excess of the total amount that would have been required to be deposited with the Trustee on such date under paragraph B(1) in respect of the remaining Obligations for which such moneys and

Defeasance Securities are being held, the Trustee shall, if requested by the Company and upon receipt by the Trustee of a certificate of an Independent Accountant setting forth the calculation of such excess, pay the amount of such excess to the Company free and clear of any trust, lien, security interest, pledge or assignment securing such Obligations or otherwise existing under this Indenture.

E. If the requirements of this Section have been satisfied with respect to all Obligations theretofore Outstanding, then, upon Company Request, the lien, rights and interest created hereby shall be canceled and surrendered (except as otherwise provided below) and the Trustee and each co-trustee and separate trustee, if any, then acting as such hereunder shall, at the expense of the Company, execute and deliver a termination statement and such instruments of satisfaction and discharge as may be necessary and pay, sign, transfer and deliver to the Company or upon Company Order all cash, securities and other personal property then held by it hereunder as part of the Trust Estate.

F. Notwithstanding the prior provisions of paragraph B of this Section, the Company may not terminate (1) its obligations under any Obligations and (2) all of its obligations under this Indenture, in accordance with the provisions of paragraph B of this Section at any time any Facility Lessor Obligation or Ambac Swap Obligation shall be Outstanding.

## **Section 7.2 Application of Deposited Money and Money From Defeasance Securities.**

Money or Defeasance Securities deposited with the Trustee or the Paying Agent pursuant to Section 7.1 shall not be part of the Trust Estate and shall not be deemed to be Trust Moneys but shall constitute a separate trust fund for the benefit of persons entitled thereto. Subject to the provisions of Section 13.3, the Trustee or Paying Agent shall hold in trust money or Defeasance Securities deposited with it pursuant to Section 7.1, and shall apply the deposited money and the money from Defeasance Securities to the payment of the principal or Redemption Price (if applicable) of, and interest on, the Obligations in respect of which such money and Defeasance Securities are deposited. If money deposited with the Trustee under this Article VII, or money received from principal or interest payments on Defeasance Securities deposited with the Trustee under this Article VII, will be required at a later date for payment of the principal or Redemption Price (if applicable) of, and interest on, the Obligations in respect of which such money and Defeasance Securities are deposited, such money shall, at the written investment direction of the Company, to the extent practicable, be reinvested in Defeasance Securities maturing at times and in amounts that, together with other moneys so deposited or to be generated by other Defeasance Securities, will be sufficient to pay when due the principal or Redemption Price (if applicable) of, and interest to become due on, such Obligations, and the interest earned from such reinvestments shall be paid over to the Company, as received by the Trustee, free and clear of any trust, lien, security interest, pledge or assignment securing said Obligations or otherwise existing under this Indenture.

## **Section 7.3 Repayment to Company.**

Subject to Section 7.1, to the extent any Defeasance Securities deposited with the Trustee under this Article, or cash received from principal or interest payments on such Defeasance Securities, will not be required in the opinion of a nationally recognized firm of Independent

Accountants expressed in a certificate signed by such firm and delivered to the Trustees and the Paying Agent or for the payment of the principal or Redemption Price (if applicable) of, and interest on, the Obligations in respect of which such money and Defeasance Securities are deposited, the Trustee and the Paying Agent shall promptly pay and deliver to the Company upon Company Request any such Defeasance Securities and cash, and thereupon the Trustee shall be relieved from any liability with respect thereto. Without limiting the foregoing, subject to the unclaimed property laws of the Commonwealth of Kentucky, the Trustee and the Paying Agent shall pay to the Company upon Company Request any money held by them for the payment of principal, Redemption Price or interest that remains unclaimed for two years after the date such payment was due; **PROVIDED** that the Trustee or such Paying Agent before being required to make any payment may at the expense of the Company cause to be mailed by first-class mail, postage prepaid to each Holder entitled to such money, notice that such money remains unclaimed and that after a date specified therein (which shall be at least thirty (30) days from the date of publication or mailing) any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders entitled to such money must look to the Company for payment as general creditors unless an applicable law designates another person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

#### **Section 7.4 Reinstatement.**

If the Trustee or Paying Agent is unable to apply any money or Defeasance Securities in accordance with Section 7.1 and the second sentence of Section 7.2 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, (i) the Company's obligations under this Indenture to or for the benefit of the Holders of Obligations for whose benefit such money or Defeasance Securities were deposited (other than obligations arising under any provisions creating the lien hereof) and under such Obligations shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.1 until such time as the Trustee or Paying Agent is permitted to apply all such money and Defeasance Securities in accordance with Section 7.1, and (ii) the lien of this Indenture shall be reinstated for the benefit of such Holders (and, if the lien of this Indenture shall previously have been fully released, then to the extent possible, the Company shall take all actions required to subject assets of the Company to a lien substantially similar, in amount and otherwise, to the Trust Estate subject to the lien of this Indenture as in effect on the date of the termination of the Company's obligations hereunder pursuant to Section 7.1, which lien shall be effective until such time as the Trustee or Paying Agent is permitted to apply all such money and Defeasance Securities in accordance with Section 7.1); **PROVIDED, HOWEVER**, that if the Company has made any payment of interest on or principal of any Obligations because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Obligations to receive such payment from the money or Defeasance Securities held therefor by the Trustee or Paying Agent.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

#### Section 8.1 Events of Default.

“**Event of Default**” means, wherever used herein, any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

A. default in the payment of any interest upon any Obligation when such interest becomes due and payable, and continuance of such default for five (5) days or such other period as may be provided for in such Obligation or in the Supplemental Indenture under which such Obligation is issued **PROVIDED**, however, that no payment by RUS pursuant to any RUS insuring of, or by any other insurer of, any Obligation shall be considered a payment of interest under this paragraph for purposes of determining the existence of such a failure to pay; or; or

B. default in the payment of the principal of (premium, if any, on) any Obligation at its Maturity and, if there is a grace period provided for in such Obligation or the Supplemental Indenture under which such Obligation is issued, the continuance of such default for any grace period so provided, **PROVIDED**, however, that no payment by RUS pursuant to any guarantee by RUS insuring of, or by any other guarantor or insurer of, any Obligation shall be considered a payment of principal (or premium) under this paragraph for purposes of determining the existence of such a failure to pay; or; or

C. default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in the performance or breach of which is described in paragraph A or B of this Section), and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by the Holders of not less than 10% in principal amount of the Obligations Outstanding, 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, unless such default cannot be reasonably cured within such thirty (30) day period then, so long as a cure is being diligently pursued, the Company shall have a reasonable period of time beyond such thirty (30) day period to complete such cure; or

D. a failure to pay any portion of the principal when due and payable (other than amounts due and payable as a consequence of a declaration of acceleration) under any bond, debenture, note or other evidence of indebtedness for money borrowed by the Company, other than any indebtedness evidenced or secured by an Obligation, whether such indebtedness now exists or shall hereafter be created, if, but only if, such failure shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it otherwise would have been due and payable in an aggregate principal amount exceeding \$10,000,000, without such indebtedness having been discharged or such declaration of acceleration having been rescinded or annulled within a period of ten (10) days after such acceleration; or

E. the rendering against the Company of a judgment for the payment of money in an amount exceeding \$10,000,000 and the continuance of such judgment unsatisfied or without stay of execution thereon for a period of forty-five (45) days after the entry of such judgment, or the continuance of such judgment unsatisfied for a period of forty-five (45) days after the termination of any stay of execution thereon entered within such first mentioned forty-five (45) day period; if, but only if, in either case, such judgment shall have continued unstayed or unsatisfied for a period of ten (10) days after there has been given a written notice specifying such situation and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by the Holders of not less than 10% in principal amount of the Obligations Outstanding; or

F. the entry by a court having jurisdiction of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order 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 federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief of any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

G. the commencement by the Company of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar 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 federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company 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 corporate action by the Company in furtherance of any such action; or

H. any Facility Lease shall have been terminated by reason of an “Event of Default” under such Facility Lease and, as a result of such termination, the Company shall be deprived of the use and benefit of the undivided interest in the generating facility or facilities which was subject to such Facility Lease.

## **Section 8.2 Acceleration of Maturity; Rescission and Annulment.**

If an Event of Default exists, then and in every such case the Trustee or the Holders of not less than 10% in principal amount of the Obligations Outstanding may declare the principal (or, in the case of Obligations of any series constituting are Original Issue Discount Obligations,

such portion of the principal amount of such Original Issue Discount Obligations as may be specified in the terms of such series) of all the Obligations to be due and payable immediately, by a notice in writing to the Company (and to the Trustee, if given by Holders), and upon any such declaration such principal shall become immediately due and payable.

At any time after such a declaration of acceleration has been made, but before any sale of any of the Trust Estate has been made under this Article or any judgment or decree for payment of money due on any Obligations has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Obligations Outstanding (unless such declaration has been made under Section 8.23 only with respect to a particular series of Outstanding Obligations, in which event only a majority in principal amount of the Obligations of such series) may, by written notice to the Company and the Trustee, rescind and annul such declaration and its consequences if

- A. the Company has paid or deposited with the Trustee a sum sufficient to pay
  - (1) all overdue installments of interest on all Obligations,
  - (2) the principal of (and premium, if any, on) any Obligations which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Obligations,
  - (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in such Obligations, and
  - (4) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

B. all Events of Default, other than the non-payment of the principal of Obligations which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in Section 8.17.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

### **Section 8.3 Entry.**

The Company agrees that upon the occurrence of an Event of Default the Company, upon demand of the Trustee during the continuance thereof, shall forthwith surrender to the Trustee the actual possession of, and it shall be lawful for the Trustee by such officers or agents as it may appoint to enter and take possession of, the Trust Estate (and the books, papers and accounts of the Company), and to hold, operate, manage and control the Trust Estate (including the making of all needful repairs, and such alterations, additions and improvements which the Trustee shall determine in its discretion to make) and to receive the rents, issues, tolls, profits, revenues and other income thereof, and, after deducting the costs and expenses of entering, taking possession, holding, operating and managing the Trust Estate, as well as payments for taxes, insurance and other proper charges upon the Trust Estate and reasonable compensation to itself, its agents and



counsel, to apply the same as provided in Section 8.7. Whenever all that is then due upon the Obligations and under any of the terms of this Indenture shall have been paid and all defaults hereunder shall have been made good, the Trustee shall surrender possession of such property to the Company.

#### **Section 8.4 Power of Sale; Suits for Enforcement.**

In case an Event of Default shall exist, the Trustee, with or without entry, in its discretion may, subject to the provisions of Section 8.16:

A. sell, subject to any mandatory requirements of applicable law, the Trust Estate as an entirety, or in such parcels as the Holders of a majority in principal amount of the Obligations then Outstanding shall in writing request, or in the absence of such request, as the Trustee may determine, to the highest bidder at public auction or private sale and upon such terms as the Trustee may (subject to applicable law) fix; or

B. proceed to protect and enforce its rights and the rights of the Holders under this Indenture by sale pursuant to judicial proceedings or by a suit, action or proceeding in equity or at law or otherwise, whether for the specific performance of any covenant or agreement contained in this Indenture or in aid of the execution of any power granted in this Indenture or for the foreclosure of this Indenture or for the enforcement of any other legal, equitable or other remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights of the Trustee or the Holders.

#### **Section 8.5 Incidents of Sale.**

Upon any sale of any of the Trust Estate, whether made under the power of sale hereby given or pursuant to judicial proceedings, to the extent permitted by law:

A. the principal of and accrued interest on all Outstanding Secured Obligations, if not previously due, shall at once become and be immediately due and payable;

B. any Holder or Holders or the Trustee may bid for and purchase the property offered for sale, and upon compliance with the terms of sale may hold, retain and possess and dispose of such property, without further accountability, and may, in paying the purchase price therefor, deliver any Outstanding Secured Obligations or claims for interest thereon in lieu of cash in the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, and (unless such sale is effected under power of sale) such Obligations, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the Holders thereof after being appropriately stamped to show partial payment;

C. the Trustee may make and deliver to the purchaser or purchasers a good and sufficient deed, bill of sale and instrument of assignment and transfer of the property sold;

D. the Trustee is hereby irrevocably appointed the true and lawful attorney of the Company, in its name and stead, to make all necessary deeds, bills of sale and instruments of assignment and transfer of the property thus sold; and for that purpose it may execute all necessary deeds, bills of sale and instruments of assignment and transfer, and may substitute one

or more persons, firms or corporations with like power, the Company hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof; but if so requested by the Trustee or by any purchaser, the Company shall ratify and confirm any such sale or transfer by executing and delivering to the Trustee or to such purchaser or purchasers all proper deeds, bills of sale, instruments of assignment and transfer and releases as may be designated in any such request;

E. all right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, of the Company of, in and to the property so sold shall be divested and such sale shall be a perpetual bar both at law and in equity against the Company, its successors and assigns, and against any and all persons claiming or who may claim the property sold or any part thereof from, through or under the Company, its successors and assigns; and

F. the receipt of the Trustee or of the officer making such sale shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money and such purchaser or purchasers and his or their assigns or personal representatives shall not, after paying such purchase money and receiving such receipt, be obliged to see to the application of such purchase money, or be in anywise answerable for any loss, misapplication or non-application thereof.

Upon a sale of substantially all the Trust Estate, whether made under the power of sale hereby given or pursuant to judicial proceedings, the Company will permit, to the extent permitted by law, the purchaser thereof and its successors and its and their assigns to take and use the name of the Company and to carry on business under such name or any variant or variants thereof and to use and employ any and all other trade names, brands and trade marks of the Company; and in such event, upon written request of such purchaser or its successors, or its or their assigns, the Company will, at the expense of the purchaser, change its name in such manner as to eliminate any similarity.

#### **Section 8.6 Covenant to Pay Trustee Amounts Due on Obligations and Right of Trustee to Judgment.**

The Company covenants that, if

A. default is made in the payment of any interest on any Obligation when such interest becomes due and payable, and such default continues for the period prescribed in paragraph A of Section 8.1, or

B. default is made in the payment of the principal of (or premium, if any, on) any Obligation at its Maturity, and, if applicable, such default continues for the period prescribed in paragraph of Section 8.1,

then upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the Holders of such Obligations, the whole amount then due and payable on such Obligations for principal (and premium, if any) and interest, with interest at the respective rate or rates prescribed therefor in the Obligations on overdue principal (and premium, if any) and, to the extent that payment of such interest is legally enforceable, on overdue installments of interest; and, in addition thereto, such further amount as shall be sufficient to cover the costs and

expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to sue for and recover judgment against the Company and any other obligor on the Obligations for the whole amount so due and unpaid.

The Trustee shall be entitled to sue and recover judgment as aforesaid and either before, after or during the pendency of any proceedings<sup>f</sup> for the enforcement of the lien of this Indenture, and in case of a sale of the Trust Estate and the application of the proceeds of sale as aforesaid, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of, and to receive, all amounts then remaining due and unpaid upon the Outstanding Secured Obligations, for the benefit of the Holders thereof, and shall be entitled to recover judgment for any portion of the same remaining unpaid, with interest as aforesaid. No recovery of any such judgment upon any property of the Company shall affect or impair the lien of this Indenture upon the Trust Estate or any rights, powers or remedies of the Trustee hereunder, or any rights, powers or remedies of the Holders of the Obligations.

#### **Section 8.7 Application of Money Collected.**

Any money collected by the Trustee pursuant to this Article, including any rents, issues, tolls, profits, revenues and other income collected pursuant to Section 8.3 (after the deductions therein provided) and any proceeds of any sale (after deducting the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents and counsel, and any taxes, assessments or liens prior to the lien of this Indenture, except any thereof subject to which such sale shall have been made), whether made under any power of sale herein granted or pursuant to judicial proceedings, and any money collected by the Trustee under Sections 5.9 and 15.5 to be applied under this Section, together with, in the case of an entry or sale or as otherwise provided herein, any other sums then held by the Trustee as part of the Trust Estate, shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Obligations and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

A. **First:** To the payment of all undeducted amounts due the Trustee under Sections 9.7 and 15.14;

B. **Second:** To the payment of the interest and principal or Redemption Price then due on the Obligations, as follows:

(1) unless the principal of all of the Obligations shall have become due and payable,

**First: Interest** – To the payment to the persons entitled thereto of all installments of interest then due (and, to the extent that payment of such interest is legally enforceable, interest on overdue installments of interest) on Outstanding Secured Obligations in the order of the maturity of such installments, together with accrued and unpaid interest on the Obligations theretofore called for

redemption or prepayment, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

**Second: Principal or Redemption Price** – To the payment to the persons entitled thereto of the unpaid principal or Redemption Price of any Outstanding Secured Obligations which shall have become due, whether at Maturity or by call for redemption, and, if the amount available shall not be sufficient to pay in full all the Obligations which shall have become due, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due, to the persons entitled thereto, without any discrimination or preference.

(2) if the principal of all of the Obligations shall have become due and payable, to the payment of the principal and interest then due and unpaid upon the Outstanding Secured Obligations without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Obligation over any other Obligation, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Obligations; and

C. **Third:** To the payment of all other amounts due and unpaid on or under the Outstanding Secured Obligations including, but not limited to, penalties, premiums, costs and expenses payable to the Holders; and

D. **Fourth:** To the payment of any amounts due under Obligations to maintain the value of reserve funds established and maintained in connection with debt securities (i) secured by a pledge of certain Obligations, (ii) issued on behalf of the Company and (iii) with respect to which an opinion was delivered on the date of the issuance of such securities to the effect that the interest on such securities is excluded from the gross income of the holder of such securities pursuant to the Internal Revenue Code, as amended.

E. **Fifth:** To the payment of the remainder, if any, to the Company or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

### **Section 8.8 Receiver.**

Upon the occurrence of an Event of Default and commencement of judicial proceedings by the Trustee to enforce any right under this Indenture, the Trustee shall be entitled, as against the Company, without notice or demand and without regard to the adequacy of the security for the Obligations or the solvency of the Company, to the appointment of a receiver of the Trust Estate, and of the rents, issues, profits, revenues and other income thereof, but, notwithstanding the appointment of any receiver, the Trustee shall be entitled to retain possession and control of, and to collect and receive the income from, cash, securities and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder.

### **Section 8.9 Trustee May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Obligations or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Obligations shall then be due and payable, as therein expressed or by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal, premium or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

A. to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Outstanding Secured Obligations and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

B. to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Sections 9.7 and 15.14.

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

### **Section 8.10 Trustee May Enforce Claims Without Possession of Obligations.**

All rights of action and claims under this Indenture or the Obligations may be prosecuted and enforced by the Trustee without the possession of any of the Obligations or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust. Any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Obligations in respect of which such judgment has been recovered.

### **Section 8.11 Limitation on Suits.**

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

A. such Holder has previously given written notice to the Trustee of a continuing Event of Default;

B. the Holders of not less than 25% in principal amount of the Outstanding Obligations shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

C. such Holder or Holders (other than the United States of America or its agencies or instrumentalities) have offered to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

D. the Trustee for sixty (60) days after its receipt of such notice, request and offer of indemnity, if any is required pursuant to paragraph C, has failed to institute any such proceeding; and

E. no direction inconsistent with such written request has been given to the Trustee during such sixty (60) day period by the Holders of a majority in principal amount of the Outstanding Obligations;

it being understood and intended that no one or more Holders of Obligations 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 lien of this Indenture or the rights of any other Holders of Obligations, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all Outstanding Secured Obligations.

### **Section 8.12 Unconditional Right of Holders to Receive Principal, Premium and Interest.**

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

### **Section 8.13 Restoration of Positions.**

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and the Holders shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and

thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

**Section 8.14 Rights and Remedies Cumulative.**

Except as otherwise provided in Sections 3.7, 7.3 and 13.3 with respect to the replacement or payment of mutilated, destroyed, lost or stolen Obligations or the payment of certain moneys, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 8.15 Delay or Omission Not Waiver.**

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

**Section 8.16 Control by Holders.**

The Holders of a majority in principal amount of the Outstanding Obligations shall have the right, during the continuance of an Event of Default,

A. to require the Trustee to proceed to enforce this Indenture, either by judicial proceedings for the enforcement of the payment of the Obligations and the foreclosure of this Indenture, the sale of the Trust Estate or otherwise or, at the election of the Trustee, by the exercise of the power of entry and/or sale hereby conferred; and

B. 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 upon the Trustee hereunder, **PROVIDED** that

(1) such direction shall not be in conflict with any rule of law or this Indenture,

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction,

(3) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders not taking part in such direction, and

(4) the Trustee shall not be obligated to take any action which is contrary to, or inconsistent with, the provisions of the Intercreditor Agreement.