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Your Touchstone Energy® Cooperative 

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**In the Matter of:**

<b>NOTICE OF TERMINATION OF CONTRACTS</b>	<b>)</b>	
<b>AND APPLICATION OF BIG RIVERS</b>	<b>)</b>	
<b>ELECTRIC CORPORATION FOR A</b>	<b>)</b>	<b>Case No.</b>
<b>DECLARATORY ORDER AND FOR</b>	<b>)</b>	<b>2018-00146</b>
<b>AUTHORITY TO ESTABLISH A REGULATORY</b>	<b>)</b>	
<b>ASSET</b>	<b>)</b>	

**Attachment for Response to Item 4 [Part 1 of 2] of the  
Kentucky Industrial Utility Customers, Inc.'s  
Second Request for Information  
dated July 16, 2018**

- (1) Indenture Agreement (2009);
- (2) 1st - 7th Supplemental Indentures;
- (3) 8th Supplemental & Amendatory Indenture (2018);
- (4) CFC 2015 Secured Credit Agmt (\$130MM);
- (5) CFC 2017 A&E to 2015 Credit Agmt (\$100MM); and
- (6) RUS 2018 Amended & Restated Consolidated Loan Contract

**FILED: July 26, 2018**

**ORIGINAL**



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**BIG RIVERS ELECTRIC CORPORATION,  
GRANTOR,**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**INDENTURE**

Dated as of July 1, 2009

**FIRST MORTGAGE OBLIGATIONS**

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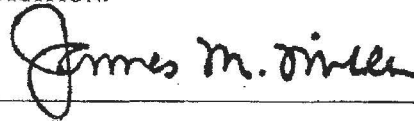
- THIS INSTRUMENT IS A MORTGAGE.
- THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.
- BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.
- THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, AFTER-ACQUIRED PROPERTY, FIXTURES AND PROCEEDS.
- FUTURE ADVANCES 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 21, 33, 142 AND 143.

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: \_\_\_\_\_



*NOTE: See 8th Supplemental & Amendatory dated January 2, 2018, for amendments to certain terms and conditions of Big Rivers' Indenture, including the definition of "Retired" for purposes of calculating Bondable Additions.*

AFTER RECORDING RETURN TO:  
Bryan R. Reynolds  
100 St. Ann Street  
Owensboro, KY 42303

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**THIS INDENTURE**, dated as of July 1, 2009 (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 **U.S. BANK NATIONAL ASSOCIATION**, 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;

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

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, 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 Ballard, Breckinridge, Caldwell, Crittenden, Daviess, Graves, Grayson, Hancock, Henderson, Hopkins, Livingston, Lyon, Marshall, 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; and

N. 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 context 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.

**“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 of the nature subject to appraisal 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 10.4, 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 10.4, 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."

**"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. Notwithstanding anything else in this definition, the Cost to the Company of any Property Additions acquired from Western Kentucky

Energy Company in the transactions approved by the Kentucky Public Service Commission in Case No. 2007-00455 and consisting of (i) the flue gas desulphurization system and associated equipment at the Company's Coleman Generating Plant, shall be \$98,500,000 and (ii) property, other than that described in clause (i) of this sentence, shall be the actual costs of acquisition thereof by Western Kentucky Energy Company, assuming the property accounts of Western Kentucky Energy Company constitute "the Company's property accounts" for purposes of the second sentence of this definition.

**"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 December 31, 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 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.



**“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 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.

**“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 (C) 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.

**“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

**“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.

**“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.

**“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 3.7.

**“Obligations”** has the meaning stated in the first recital of this Indenture.

**“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.

**“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; (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 a nationally recognized firm of Independent Accountants 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 or replaced pursuant to Section 3.8 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; and

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.

**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, 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. 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 3.8 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.

**"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.

**"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.

**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.

**"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;

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; and

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.

**“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.

**“Principal Corporate Trust Office”** means the location of the Trustee for administration under the Indenture which is 225 Asylum Street, Hartford, CT 06103, or such other location as the Trustee may provide in writing.



**“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;

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; and

D. tangible property acquired by the Company from Western Kentucky Energy Company in the transactions approved by the Kentucky Public Service Commission in Case No. 2007-00455, including, without limitation, the flue gas desulfurization system and associated

equipment at the Company Coleman Generating Plant, regardless of whether the Company has title to such property on the Cut-Off Date.

**“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,

**NOTE: See 8th Supplemental & Amendatory dated January 2, 2018, for amendments to certain terms and conditions of Big Rivers' Indenture, including the definition of "Retired" for purposes of calculating Bondable Additions.**

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, 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 any officer within the corporate trust department of the Trustee, including any vice-president, any trust officer 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.

**"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:

(a) 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

(b) 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” 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 3.9.

**“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 of 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, wheeling, 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 (C) 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 (C).

**"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.

**"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 Principal Corporate Trust Office 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:	U.S. Bank National Association 225 Asylum Street Hartford, Connecticut 06103

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 Obligations Other than Bonds; Principal Amount of RUS 2009 Promissory Note Series B.**

(a) At any point in time, the principal amount of any Obligation 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.

(b) The principal amount of the RUS 2009 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 2009 Promissory Note Series B, multiplied by the applicable Acceleration Percentage for any such year in question identified in the description of the RUS 2009 Promissory Note Series B on Exhibit C.

## **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 July 1, 2009, 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 July 16, 2009.



## **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 July 1, 2009, between Big Rivers Electric Corporation and U.S. Bank National Association.

\_\_\_\_\_  
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 July 1, 2009, between Big Rivers Electric Corporation and U.S. Bank National Association.

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

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

### ARTICLE III

#### THE OBLIGATIONS

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

There shall be three separate series of Existing Obligations, consisting of the Series 1983 Revenue Bond Obligations, the Series 2001A Revenue Bond 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 terms and conditions of all 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, 12.6 or 14.7 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 14.4 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 written 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)



**NOTE: See 8th Supplemental & Amendatory dated January 2, 2018, for amendments to certain terms and conditions of Big Rivers' Indenture, including the definition of "Retired" for purposes of calculating Bondable Additions.**

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 5.2, (vi) the conversion of outstanding principal amounts under Section 4.10 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 5.2, 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, \$0 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, \$0, \$ \_\_\_\_\_ 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 if 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 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 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 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).

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.

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 80% 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 4.10 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 30% 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(iii), 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 80.00% 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 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 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 VI.

### **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 VI 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 VII, 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;

(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; and

(5) the Holders have perfected security interests in the moneys and Defeasance Securities deposited.

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.

### **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 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

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

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 25% 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 25% 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.

## **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 25% 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 either before, after or during the pendency of any proceedings 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; and

(3) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Holders not taking part in such direction.

### **Section 8.17 Waiver of Past Defaults.**

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 has been obtained by the Trustee as provided in this Article, the Holders of not less than a majority in principal amount of the Outstanding Obligations may, by Act of such Holders delivered to the Trustee and the Company, on behalf of the Holders of all the Obligations waive any past default hereunder and its consequences, except a default

A. in the payment of the principal of (or premium, if any) or interest on any Obligation, or

B. in respect of a covenant or provision hereof which under Article XII cannot be modified or amended without the consent of the Holder of each Outstanding Obligation affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

### **Section 8.18 Undertaking for Costs.**

All parties to this Indenture agree, and each Holder of any Obligation by acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party in such suit of an

undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party in such suit, having due regard to the merits and good faith of the claims or defenses made by such party; but the provisions of this Section shall not apply to any suit instituted by the Trustee, by the United States of America (or its agencies or instrumentalities) or by any Holder, or group of Holders, holding in the aggregate more than 25% in principal amount of the Outstanding Obligations, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Obligation on or after the respective Stated Maturities expressed in such Obligation (or, in the case of redemption, on or after the Redemption Date).

#### **Section 8.19 Waiver of Appraisalment and Other Laws.**

To the full extent that it may lawfully so agree, the Company will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisalment, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture or the absolute sale of the Trust Estate, or any part thereof, or the possession thereof by any purchaser at any sale under this Article; and the Company, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Company, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Trust Estate marshaled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose this Indenture may order the sale of the Trust Estate as an entirety.

If any law in this Section referred to and now in force, of which the Company or its successor or successors might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section.

#### **Section 8.20 Suits to Protect the Trust Estate.**

The Trustee shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Indenture and to protect its interests and the interests of the Holders in the Trust Estate and in the rents, issues, profits, revenues, proceeds, products and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Holders or the Trustee.

#### **Section 8.21 Remedies Subject to Applicable Law.**

All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render



this Indenture invalid, unenforceable or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

#### **Section 8.22 Principal Amount of Original Issue Discount Obligation.**

The principal amount of an Original Issue Discount Obligation 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 hereunder, be determined in the manner specified in the Supplemental Indenture establishing the series to which such Original Issue Discount Obligation belongs.

#### **Section 8.23 Default Not Affecting All Series of Obligations.**

In case an Event of Default affecting the rights of the Holders of Obligations of any one or more series which does not similarly affect the rights of Holders of all other series of Obligations at the time Outstanding (including an Event of Default specified in a Supplemental Indenture creating a series of Obligations) shall have occurred and be continuing, then whatever action (including the acceleration of Obligations under Section 8.2, the giving of any request or direction to the Trustee under Section 8.11 or 8.16 or the waiver of any default under Section 8.17) may or shall be taken under this Article upon the occurrence of such Event of Default by or upon the request of the Holders of a specified percentage in principal amount of the Obligations then Outstanding, may or shall be taken in respect of the Obligations then Outstanding of the series as to which such Event of Default shall have been made, by or upon the request of the Holders of the same percentage in principal amount of such series then Outstanding; provided, however, nothing in this Section 8.23 shall preclude the occurrence of an Event of Default under paragraph A or B of Section 8.1 simply because the default in payment has only occurred with respect to one series of Obligations.

### **ARTICLE IX**

#### **THE TRUSTEE**

#### **Section 9.1 Certain Duties and Responsibilities.**

A. Except during the continuance of an Event of Default,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

B. In case an Event of Default exists, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

C. No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this paragraph shall not be construed to limit the effect of paragraph A above;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Obligations relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

D. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

## **Section 9.2 Notice of Defaults.**

Within ninety (90) days after the occurrence of any default hereunder, the Trustee shall transmit by mail to all Holders entitled to receive reports pursuant to Section 10.3C, if operative, and if Section 10.3C is not operative, to all Holders of Obligations as their names and addresses appear in the Obligation Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; **PROVIDED, HOWEVER**, that, except in the case of a default in the payment, repayment or prepayment of the principal of (or premium, if any) or interest on any Obligation or in the payment of any sinking or purchase fund installment, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders; and **PROVIDED FURTHER** that, in the case of any default of the character specified in Section 8.1C or 8.1D, no such notice to Holders shall be given until at least sixty (60) days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

### **Section 9.3 Certain Rights of Trustee.**

Except as otherwise provided in Section 9.1:

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

B. any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

C. whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

E. the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders (other than the United States of America or its agencies or instrumentalities) shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

F. the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, or, except as specifically provided herein, compliance by the Company with its agreements or covenants in this Indenture, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

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

H. the Trustee shall not be personally liable, in case of entry by it upon the Trust Estate, for debts contracted or liabilities or damages incurred in the management or operation of the Trust Estate;

I. the Trustee shall not be required to take notice or be deemed to have notice of any default hereunder unless the Trustee shall be specifically notified in writing of such default by the Company or by the Holder of any Obligation as to the Events of Default described in paragraph A or B of Section 8.1, or by the Holders of not less than twenty-five percent (25%) of the Holders of Obligations as to any other Event of Default;

J. The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 13. In addition, the Trustee shall not be deemed to have knowledge of an Event of Default except any Default or Event of the Default of which the Trustee shall have received written notification or obtained actual knowledge; and

K. Delivery of reports, information and documents to the Trustee under Section 11.4, is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

#### **Section 9.4 Not Responsible for Recitals or Issuance of Obligations or Application of Proceeds.**

The recitals contained herein and in the Obligations, except the Trustee's certificate of authentication on the Obligations, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Company thereto or as to the security afforded thereby or hereby, or as to the validity or genuineness of any securities at any time pledged and deposited with the Trustee hereunder, or as to the validity or sufficiency of this Indenture or of the Obligations. The Trustee shall not be accountable for the use or application by the Company of Obligations or the proceeds thereof or of any money paid to the Company or upon Company Order under any provision hereof.

#### **Section 9.5 May Hold Obligations.**

The Trustee, any Paying Agent, Obligation Registrar, Authenticating Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Obligations and, subject to Sections 9.8 and 9.13, if operative, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Obligation Registrar, Authenticating Agent or such other agent.

#### **Section 9.6 Money Held in Trust.**

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

## **Section 9.7 Compensation and Reimbursement.**

The Company agrees

A. to pay to the Trustee from time to time such compensation as may be specifically agreed upon with the Trustee and, absent specific agreement, reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

B. except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's negligence or bad faith; and

C. to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

All such payments and reimbursements shall be made with interest at the rate of 10% per annum.

As security for the performance of the obligations of the Company under this Section, the Trustee shall be secured under this Indenture by a lien prior to the Obligations, and for the payment of such compensation, expenses, reimbursements and indemnity the Trustee shall have the right to use and apply any Trust Moneys held by it under Article VI.

## **Section 9.8 Disqualification; Conflicting Interests.**

A. If the Trustee has or shall acquire any conflicting interest, as defined in this Section (certain terms being defined and percentages calculated as hereinafter stated in this Section), if the default to which such conflicting interest relates has not been cured or duly waived or otherwise eliminated within the ninety (90) day period immediately following the date on which the Trustee ascertains that it has such conflicting interest, it shall, within such ninety (90) day period, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

B. In the event that the Trustee shall fail to comply with the provisions of paragraph A above the Trustee shall, within ten (10) days after the expiration of such ninety (90) day period, transmit notice of such failure to the Holders in the manner and to the extent provided in Section 10.3C.

C. For the purposes of this Section, the Trustee shall be deemed to have a conflicting interest if there is an Event of Default and

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the



Company are outstanding, or is trustee for more than one outstanding series of securities, as hereafter defined, under a single indenture of the Company, unless such other indenture is a collateral trust indenture under which the only collateral consists of Obligations issued under or secured by this Indenture, **PROVIDED** that there shall be excluded from the operation of this clause other series under this Indenture and any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding, if the Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures or under more than one outstanding series under a single indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures or with respect to such series; or

(2) the Trustee or any of its directors or executive officers is an underwriter for the Company; or

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with the Company or an underwriter for the Company; or

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee or representative of the Company, or of an underwriter (other than the Trustee itself) for the Company who is currently engaged in the business of underwriting, except that (i) one individual may be a director or an executive officer, or both, of the Trustee and a director or an executive officer, or both, of the Company but may not be at the same time an executive officer of both the Trustee and the Company; (ii) if and so long as the number of directors of the Trustee in office is more than nine, one additional individual may be a director or an executive officer, or both, of the Trustee and a director of the Company; and (iii) the Trustee may be designated by the Company or by any underwriter for the Company to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depository, or in any other similar capacity, or, subject to the provisions of clause (1) above, to act as trustee, whether under an indenture or otherwise; or

(5) 10% or more of the voting securities of the Trustee is beneficially owned either by the Company or by any director, partner, or executive officer thereof, or 20% or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10% or more of the voting securities of the Trustee is beneficially owned either by an underwriter for the Company or by any director, partner or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons; or

(6) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this paragraph defined), (i) 5% or more of the voting securities, or 10% or more of any other class of security, of the Company not including the obligations issued under or secured by this Indenture and securities issued

under any other indenture under which the Trustee is also trustee, or (ii) 10% or more of any class of security of an underwriter for the Company; or

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this paragraph defined), 5% or more of the voting securities of any person who, to the knowledge of the Trustee, owns 10% or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, the Company; or

(8) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this paragraph defined), 10% or more of any class of security of any person who, to the knowledge of the Trustee, owns 50% or more of the voting securities of the Company; or

(9) the Trustee owns, upon the occurrence of an Event of Default (or any occurrence that would constitute an Event of Default upon the lapse of time or giving of notice) or any anniversary of such date while such Event of Default or occurrence remains outstanding, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25% or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under clauses (6), (7) or (8) above. As to any such securities of which the Trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply, for a period of two (2) years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25% of such voting securities or 25% of any such class of security. Promptly after any Event of Default (or other occurrence that would constitute an Event of Default upon the lapse of time or giving of notice) and annually in each succeeding year that any Event of Default or other occurrence remains outstanding, the Trustee shall make a check of its holdings of such securities in any of the above-mentioned capacities as of such dates. If the Company fails to make payment in full of the principal of, or the premium, if any, or interest on, any of the Obligations when and as the same becomes due and payable, and such failure continues for thirty (30) days thereafter, the Trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such thirty (30) day period, and after such date, notwithstanding the foregoing provisions of this clause, all such securities so held by the Trustee, with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of clauses (6), (7) and (8) above; or

(10) except under the circumstances described in clauses (1), (3), (4), (5) or (6) of Section 9.13B, the Trustee shall become a creditor of the Company.

For purposes of clause (1) above, the term "series of securities" or "series" means a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the Trustee, or otherwise take action pursuant to a vote of such

Holders, separately from Holders of another such series; **PROVIDED** that “series of securities” or “series” shall not include any series of securities issuable under an indenture if all such series rank equally and are wholly unsecured.

The specification of percentages in clauses (5) to (9) inclusive, above, shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of clause (3) or (7) above.

For the purposes of clauses (6), (7), (8) and (9) above only, (a) the terms “**security**” and “**securities**” shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness; (b) an obligation shall be deemed to be “**in default**” when a default in payment of principal shall have continued for thirty (30) days or more and shall not have been cured; and (c) the Trustee shall not be deemed to be the owner or holder of (i) any security which it holds as collateral security, as trustee or otherwise, for an obligation which is not in default as defined above, or (ii) any security which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent, or depository, or in any similar representative capacity.

Except in the case of the failure to pay, repay or prepay the principal of or interest on any Obligation, or to pay any sinking or purchase fund installment, on the date on which it becomes due, the Trustee shall not be required to resign as provided by this paragraph if such Trustee shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that

(a) the Event of Default (or other event that would constitute an Event of Default upon the passage of time or giving of notice) otherwise giving rise to an obligation by the Trustee to resign may be cured or waived during a reasonable period and under the procedures described in such application, and

(b) a stay of the Trustee’s duty to resign will not be inconsistent with the interests of Holders of the Obligations. The filing of such an application shall automatically stay the performance of the duty to resign until the Commission orders otherwise.

Any resignation of the Trustee shall become effective only upon the appointment of a successor trustee and such successor’s acceptance of such an appointment.

D. For the purposes of this Section:

(1) The term “**underwriter**” when used with reference to the Company means every person who, within one year prior to the time as of which the determination is made, has purchased from the Company with a view to, or has offered or sold for the Company in connection with, the distribution of any security of the Company outstanding at such time, or has participated or has had a direct or indirect participation in any such

undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) The term "**director**" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(3) The term "**person**" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this clause, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(4) The term "**voting security**" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person.

(5) The term "**Company**" means any obligor upon the Obligations.

(6) The term "**Trustee**" includes any separate or co-trustee appointed under Section 9.14.

(7) The term "**executive officer**" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not, include the chairman of the board of directors.

E. The percentages of voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

(1) A specified percentage of the voting securities of the Trustee, the Company or any other person referred to in this Section (each of whom is referred to as a "**person**" in this clause) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(2) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(3) The term "**amount**" means, when used in regard to securities, the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

(4) The term “**outstanding**” means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(a) securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(b) securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(c) securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise; and

(d) securities held in escrow if placed in escrow by the issuer thereof;

**PROVIDED, HOWEVER**, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(5) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges; **PROVIDED, HOWEVER**, that, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series as different classes, and **PROVIDED FURTHER** that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

#### **Section 9.9 Corporate Trustee Required; Eligibility.**

There shall at all times be a Trustee hereunder which (i) shall be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or the District of Columbia, which is authorized under such laws to exercise corporate trust powers, and subject to supervision or examination by federal, state, territorial or District of Columbia authority, and (ii) shall have a combined capital and surplus of at least \$50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. Neither the Company nor any Person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee hereunder. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.



## **Section 9.10 Resignation and Removal; Appointment of Successor.**

A. No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 9.11.

B. The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

C. Unless an Event of Default (or an occurrence that would constitute an Event of Default upon the passage of time or the giving of notice) exists, the Company may remove the Trustee with or without cause, by delivery to the Trustee of a Board Resolution effecting such removal. The Trustee may be removed with or without cause at any time by Act of the Holders of a majority in principal amount of the Outstanding Obligations, delivered to the Trustee and to the Company.

D. If at any time:

(1) the Trustee shall fail to comply with Section 9.8A after written request therefor by the Company or by any Holder who has been a bona fide Holder of an Obligation for at least six (6) months, or

(2) the Trustee shall cease to be eligible under Section 9.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by a Board Resolution may remove the Trustee, or (ii) subject to Section 8.18, any Holder who has been a bona fide Holder of an Obligation for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

E. If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, or the Holders of a majority in principal amount of the Outstanding Obligations shall promptly appoint a successor Trustee. In case all or substantially all of the Trust Estate shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee, by written instrument, may similarly appoint a successor to fill such vacancy until a new Trustee shall be so appointed by the Holders. If, within one (1) year after such resignation, removal or incapability or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Obligations delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of

such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company or by such receiver or trustee. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, subject to Section 8.18, any Holder who has been a bona fide Holder of an Obligation for at least six (6) months may, on behalf of himself and all other similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

F. The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Obligations as their names and addresses appear in the Obligation Register or as their names and their addresses have been previously provided to the Trustee in writing. Each notice shall include the name of the successor Trustee and the address of its principal corporate trust office. Upon the appointment of a new Trustee in the place of, any Trustee named herein acting hereunder, an instrument, executed and acknowledged by the Trustee, shall be conclusive proof of the proper substitution of such successor or successors or new Trustee, who shall have all the estate powers, duties, rights and privileges of the predecessor Trustee.

G. Upon the resignation, removal or incapability of the Trustee, all books and records of the Trustee relating to the Trust Estate shall be sent to the successor Trustee within sixty (60) days of such resignation, removal or incapability. In the event (i) the Trustee resigns due to any conflict of interest or incapability, (ii) there is any change in control, merger, conversion, consolidation or succession to the assets of the Trustee or (iii) the Company removes the Trustee as a result of any such change in control, merger, conversion, consolidation or succession, the Trustee shall pay all costs associated with transferring the Trust Estate to a successor Trustee.

#### **Section 9.11 Acceptance of Appointment by Successor.**

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Trustee upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Sections 9.7 and 15.14. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such estates, properties, rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article, to the extent operative.

## **Section 9.12 Merger, Conversion, Consolidation or Succession to Business.**

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Obligations shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Obligations so authenticated with the same effect as if such successor Trustee had itself authenticated such Obligations.

## **Section 9.13 Preferential Collection of Claims against Company.**

A. Subject to paragraph B below, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within three (3) months prior to a default (as defined in paragraph C below), or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Obligations and the holders of other indenture securities (as defined in paragraph C below:

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such three (3) month period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in clause (2) below, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such three (3) month period, or an amount equal to the proceeds of any such property, if disposed of, **SUBJECT, HOWEVER**, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(a) to retain for its own account (i) payments made on account of any such claim by any Person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceeding for reorganization pursuant to the Federal Bankruptcy Code or applicable state law; or

(b) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such three (3) month period; or

(c) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such three (3) month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default would occur within three (3) months; or

(d) to receive payment on any claim referred to in Subclause (b) or (c) above, against the release of any property held as security for such claim as provided in Subclause (b) or (c) above, as the case may be, to the extent of the fair value of such property.

For the purposes of Subclauses (b), (c) and (d) above, property substituted after the beginning of such three (3) month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of said Subclauses is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned among the Trustee, the Holders and the holders of other indenture securities in such manner that the Trustee, the Holders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for liquidation or reorganization pursuant to the Federal Bankruptcy Code or applicable state law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Holders and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for liquidation or reorganization pursuant to the Federal Bankruptcy Code or applicable state law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "**dividends**" shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Code or applicable state law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceeding for reorganization is pending shall have jurisdiction (i) to apportion among the Trustee, the Holders and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special

account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Holders and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such three (3) month period shall be subject to the provisions of this subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such three (3) month period, it shall be subject to the provisions of this subsection if and only if the following conditions exist:

(y) the receipt of property or reduction of claim, which would have given rise to the obligation to account, if such Trustee had continued as Trustee, occurred after the beginning of such three (3) month period; and

(z) such receipt of property or reduction of claim occurred within three (3) months after such resignation or removal.

B. There shall be excluded from the operation of paragraph A above a creditor relationship arising from:

(1) the ownership or acquisition of securities issued under any indenture or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee; or

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Holders at the time and in the manner provided in this Indenture; or

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity; or

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction (as defined in paragraph C below); or

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or



(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper (as defined in paragraph C below).

C. For the purposes of this Section only:

(1) The term “**default**” means any failure to make payment in full of the principal of or interest on any of the Obligations or upon the other indenture securities when and as such principal or interest become due and payable;

(2) The term “**other indenture securities**” means securities upon which the Company is an obligor outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in such special account;

(3) The term “**cash transaction**” means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand;

(4) The term “**self-liquidating paper**” means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation;

(5) The term “**Company**” means any obligor upon the Obligations;

(6) The term “**Federal Bankruptcy Code**” means Title 11 of the United States Code, as it may be amended from time to time; and

(7) The term “**Trustee**” includes any separate or co-trustee appointed under Section 9.14.

#### **Section 9.14 Co-trustees and Separate Trustees.**

At any time or times, for the purpose of meeting the legal requirements of any jurisdiction in which any of the Trust Estate may at the time be located, the Company and the Trustee shall have power to appoint, and, upon the written request of the Trustee or of the Holders of at least 25% in principal amount of the Obligations Outstanding, the Company shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Trustee either to act as co-trustee, jointly with the Trustee, of all or any part of the Trust Estate,

or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Company does not join in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default exists, the Trustee alone shall have power to make such appointment.

Should any written instrument from the Company be required by any co-trustee or separate trustee so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Company.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

A. the Obligations shall be authenticated and delivered, and all rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder, shall be exercised solely, by the Trustee;

B. the rights, powers, duties and obligations hereby conferred or imposed upon the Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Trustee or by the Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee;

C. the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Company evidenced by a Board Resolution, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default has occurred and is continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Company. Upon the written request of the Trustee, the Company shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section;

D. no co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Trustee, or any other such trustee hereunder; and

E. any Act of Holders delivered to the Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

### **Section 9.15 Authenticating Agent.**

The Trustee may appoint an Authenticating Agent or Agents which shall be authorized to act on behalf of the Trustee to authenticate Obligations issued upon original issue and upon exchange, registration of transfer or partial redemption or pursuant to Sections 3.5, 3.6, 3.7 or 14.7, and Obligations so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Such Authenticating Agent shall at all times be a bank or trust company, and shall at all times be a corporation organized and doing business under the laws of the United States or of any state, territory or the District of Columbia, with a combined capital and surplus of at least \$50,000,000 and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually pursuant to law or the requirements of such supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authenticating Agent, shall continue to be the Authenticating Agent hereunder, provided such corporation shall otherwise be eligible under this Section, without the execution or filing of any further act on the part of the parties hereto or the Authenticating Agent or such successor corporation.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and the Company. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section, the Trustee shall promptly appoint a successor Authenticating Agent, shall give written notice of such appointment to the Company and shall mail notice of such appointment by first-class mail, postage prepaid, to all Holders of Obligations of the applicable series as the names and addresses of such Holders appear on the Obligation Register.

If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

The Trustee agrees to pay to the Authenticating Agent from time to time reasonable compensation for its services under this Section and the Trustee shall be entitled to be reimbursed by the Company for such payments, subject to Sections 9.7 and 15.14. The provisions of Sections 3.9, 9.4 and 9.5 shall be applicable to any Authenticating Agent.

Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect

as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

If an appointment is made pursuant to this Section, the Obligations may have endorsed thereon, in lieu of the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Obligations (of the series identified therein) referred to in the Indenture, dated as of July 1, 2009, between Big Rivers Electric Corporation and U.S. Bank National Association.

\_\_\_\_\_  
As Trustee

By: \_\_\_\_\_  
As Authenticating Agent

By: \_\_\_\_\_  
Authorized Officer

## ARTICLE X

### HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

#### Section 10.1 Company to Furnish Trustee Semi-Annual Lists of Holders.

The Company will furnish or cause to be furnished to the Trustee semiannually, not less than forty-five (45) days nor more than sixty (60) days after June 1 and December 1 of each year, and at such other times as the Trustee may request in writing, within thirty (30) days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, as to the names and addresses of the Holders of Obligations, obtained since the date as of which the next previous list, if any, was furnished, EXCLUDING from any such list the names and addresses received by the Trustee in its capacity as Obligation Registrar. Any such list may be dated as of a date not more than fifteen (15) days prior to the time such information is furnished and need not include information received after such date.

#### Section 10.2 Preservation of Information; Communications to Holders.

A. The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Obligations (i) contained in the most recent list furnished to the Trustee as provided in Section 10.1, (ii) received by the Trustee in the capacity of Paying Agent (if so acting) hereunder, (iii) filed with the Trustee by Holders of Obligations within the two (2) preceding years as provided for in Section 10.3C(2), or (iv) received by the Trustee in its capacity as Obligation Registrar.

The Trustee may (1) destroy any list furnished to it under Section 10.1 upon receipt of a new list so furnished, (2) destroy any information received by it as Paying Agent (if so acting) hereunder upon delivering to itself as Trustee, not earlier than forty-five (45) days after each June 1 and December 1 of each year, a list containing the names and addresses of the Holders of Obligations obtained from such information since the delivery of the next previous list, if any, (3) destroy any list delivered to itself as Trustee which was compiled from information received by it as Paying Agent (if so acting) hereunder upon the receipt of a new list so delivered, and (4) destroy, not earlier than two (2) years after filing, any information as to their names and addresses filed with the Trustee by Holders of Obligations as provided for in Section 10.3C(2).

B. If RUS, to the extent it is a Holder, or three or more Holders of Obligations (hereinafter referred to as “**applicants**”) apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned an Obligation for a period of at least six (6) months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Obligations with respect to their rights under this Indenture or under the Obligations and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five (5) business days after the receipt of such application, at its election, either

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 10.2A, or

(2) inform such applicants as to the approximate number of Holders of Obligations whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 10.2A, and as to the approximate cost of mailing to such Holders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 10.2A, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five (5) days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Obligations or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Holders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.



C. Every Holder of Obligations, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Paying Agent shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Obligations in accordance with Section 10.2B, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 10.2B.

### **Section 10.3 Reports by Trustee.**

This Section 10.3 shall be operative only while this Indenture is required to be qualified under the TIA.

A. The term “**reporting date**” means, as used in this Section, January 1 in each year, beginning with the year 2009. Within sixty (60) days after the reporting date in each year, the Trustee shall transmit to the Holders, as provided in paragraph C below, a brief report dated as of such reporting date with respect to any of the following events which may have occurred within the previous twelve (12) months (but if no such event has occurred within such period no such report need be transmitted):

(1) any change to its eligibility under Section 9.9 and its qualifications under Section 9.8;

(2) the creation of or any material change to a relationship specified in clauses (1) through (10) of Section 9.8(C),

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Obligations, on the Trust Estate or on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than one-half of 1% of the principal amount of the Obligations Outstanding on the date of such report;

(4) the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Obligations) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 9.13B(2), (3), (4) or (6);

(5) any change to the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(6) any release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) which the Trustee has not previously reported; **PROVIDED, HOWEVER**, that to the extent that the aggregate value as shown by the release papers of any or all of such released properties does not exceed an amount equal to 1% of the principal amount of Obligations then Outstanding,

the report need only indicate the number of such releases, the total value of property released as shown by the release papers, the aggregate amount of cash received and the aggregate value of property received in substitution therefor as shown by the release papers;

(7) any additional issue of Obligations which the Trustee has not previously reported; and

(8) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Obligations or the Trust Estate, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 9.2.

B. The Trustee shall transmit to the Holders, as provided in paragraph C below, a brief report (which the Company shall cooperate with the Trustee in preparing) with respect to

(1) the release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the Officers' Certificate or certificate of an Engineer or Appraiser under Section 5.2, is less than 10% of the principal amount of Obligations Outstanding at the time of such release, or such release and substitution, such report to be so transmitted within ninety (90) days after such time; and

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to paragraph A above (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Obligations, on the Trust Estate or on any property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of the Obligations Outstanding at such time, such report to be transmitted within ninety (90) days after such time.

C. **Reports pursuant to this Section shall be transmitted by mail:**

(1) to all Holders of Obligations, as the names and addresses of such Holders appear in the Obligation Register;

(2) to such Holders as have, within the two (2) years preceding such transmission, filed their names and addresses with the Trustee for that purpose; and

(3) except in the case of reports pursuant to paragraph B above, to all Holders whose names and addresses have been furnished to or received by the Trustee pursuant to Section 10.1.

D. A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any of the Obligations are listed and also with the Commission. The Company will notify the Trustee when the Obligations are listed on any stock exchange.

#### **Section 10.4 Reports by Company.**

This Section 10.4 shall be operative only while this Indenture is required to be qualified under the TIA.

The Company shall:

A. file with the Trustee, within fifteen (15) days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

B. file with the Trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required by such rules and regulations; and

C. transmit to the Holders of Obligations, within thirty (30) days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 10.3C with respect to reports pursuant to Section 10.3A, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs A and B above as may be required by rules and regulations prescribed by the Commission.

### **ARTICLE XI**

#### **CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER**

##### **Section 11.1 Consolidation, Merger, Conveyance or Transfer only on Certain Terms.**

The Company shall not consolidate with or merge into any other Person or convey or transfer the Trust Estate substantially as an entirety to any Person, unless:

A. such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security hereof as provided for in this Article and the rights and powers of the Trustee and the Holders of the Obligations hereunder;

B. the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer the Trust Estate substantially as an entirety shall be a Person organized and validly existing under the laws of the United States of America, any state thereof or the District of Columbia and shall execute and deliver to the Trustee a Supplemental Indenture in recordable form, meeting the requirements of Section 11.2 and containing:

(1) an assumption by such successor Person of the due and punctual payment of the principal of (and premium, if any) and interest on all the Obligations and, subject to Section 11.2B, the performance and observance of every covenant and condition of this Indenture to be performed or observed by the Company, and

(2) a grant, conveyance, transfer and mortgage complying with Section 11.2;

C. immediately after giving effect to such transaction, no Event of Default hereunder shall exist; and

D. the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each of which shall state that such consolidation, merger, conveyance or transfer and such Supplemental Indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

#### **Section 11.2 Successor Person Substituted.**

Upon any consolidation or merger or any conveyance or transfer of the Trust Estate substantially as an entirety in accordance with Section 11.1, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; **SUBJECT, HOWEVER,** to the following limitations:

A. If the Supplemental Indenture required by Section 11.1 shall contain a grant, conveyance, transfer and mortgage in terms sufficient to include and subject to the lien of this Indenture, subject only to Permitted Exceptions and any Prior Liens permitted by Section 13.6, all property, rights, privileges and franchises owned by the successor Person on the date of the consolidation, merger, transfer or conveyance and which may be thereafter acquired by such successor Person (other than Excepted Property and Excluded Property), then such successor Person may cause to be executed, in its own name or in the name of the Company prior to such succession, and delivered to the Trustee for authentication, any Obligations issuable hereunder; and upon request of such successor Person, and subject to all the terms of this Indenture, the Trustee shall authenticate and deliver any Obligations which shall have been previously executed and delivered by the Company to the Trustee for authentication, and any Obligations which such successor Person shall thereafter, in accordance with this Indenture, cause to be executed and delivered to the Trustee for such purpose. Such changes in language and form (but not in substance) may be made in such Obligations as may be appropriate in view of such consolidation, merger, conveyance or transfer.

B. If the Supplemental Indenture required by Section 11.1 shall not contain the grant, conveyance, transfer and mortgage described in paragraph A above, then such successor Person shall not be entitled to procure the authentication and delivery of any Obligations issuable hereunder (except for Obligations issued under Sections 3.5, 3.6, 3.7 and 14.7), and this Indenture shall not, by virtue of such consolidation, merger, conveyance or transfer, or by virtue of such Supplemental Indenture, or by virtue of the Granting Clauses, become a lien upon, and the term Trust Estate shall not be deemed to include, any of the property, rights, privileges and franchises of such successor Person owned by the successor Person at the time of such consolidation, merger, conveyance or transfer (unless such successor Person, in its discretion shall subject the same to the lien hereof), but this Indenture shall become and be a lien, subject to only Permitted Exceptions and any Prior Liens permitted by Section 13.6, upon only the following property, rights, privileges and franchises acquired by such successor Person after the date of such consolidation, merger, conveyance or transfer, to wit:

(1) all betterments, extensions, improvements, additions, repairs, renewals, replacements, substitutions and alterations to, upon, for and of the property, rights, privileges and franchises subject to the lien hereof, and all property constituting appurtenances of the Trust Estate;

(2) all property made the basis of the withdrawal of cash from the Trustee or the release of property from the lien of this Indenture;

(3) all property acquired or constructed with the proceeds of (i) any insurance on any part of the Trust Estate, including with the proceeds of insurance on the Trust Estate not required to be paid to the Trustee under Section 13.8, or (ii) any part of the Trust Estate released from the lien of this Indenture or disposed of free from any such lien or taken by eminent domain;

(4) all property acquired pursuant to Section 13.7 to maintain and preserve and keep the Trust Estate in good condition, repair and working order and all property acquired or constructed with Trust Moneys paid over upon Company Request under Section 6.6; and

(5) all property, leases, rights-of-way, franchises, licenses, permits or easements acquired in alteration, substitution, surrender or modification of any property, leases, rights-of-way, franchises, licenses, permits or easements disposed of, altered or modified pursuant to Section 5.1 and all monies deposited in connection therewith pursuant to Section 5.1;

and said Supplemental Indenture shall contain a grant, conveyance, transfer or mortgage subjecting the property referred to in the preceding clauses of this paragraph to the lien of this Indenture.

C. No such conveyance or transfer of the Trust Estate substantially as an entirety shall have the effect of releasing the Person named as "the Company" in the first paragraph of this instrument or any successor Person which shall have become such in the manner prescribed in this Article from its liability as obligor and maker on any of the Obligations, unless such



conveyance or transfer is followed by the complete liquidation of such Person or successor Person and substantially all its assets immediately following such conveyance or transfer are the Stock or other securities of such successor Person received in such conveyance or transfer.

## ARTICLE XII

### SUPPLEMENTAL INDENTURES

#### Section 12.1 Supplemental Indentures Without Consent of Holders.

Without the consent of the Holders of any Obligations, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more Supplemental Indentures, in form satisfactory to the Trustee, for any of the following purposes:

A. to correct or amplify the description of any property at any time subject to the lien of this Indenture, or better to assure, convey and confirm unto the Trustee any property subject or required to be subjected to the lien of this Indenture, or to subject additional property to the lien of this Indenture; or

B. to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Obligations or of any series of Obligations, as herein set forth, additional conditions, limitations and restrictions thereafter to be observed; or

C. to create any series of Obligations and make such other provisions as provided in Section 3.3; or

D. to modify or eliminate any of the terms of this Indenture; **PROVIDED, HOWEVER,** that

(1) in the event any such modification or elimination made in such Supplemental Indenture would adversely affect or diminish the rights of the Holders of any Obligations then Outstanding against the Company or its property, it shall expressly be stated in such Supplemental Indenture that any such modifications or eliminations shall become effective only when such Obligations are no longer Outstanding; and

(2) the Trustee may, in its discretion, decline to enter into any such Supplemental Indenture which, in its opinion, may not afford adequate protection to the Trustee when the same becomes operative; or

E. to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company herein and in the Obligations contained; or

F. to evidence the appointment of any successor trustee or separate trustee or trustees or co-trustee or co-trustees hereunder, and to define the rights, powers, duties and obligations conferred upon any such separate trustee or trustees or co-trustee or co-trustees; or

G. to add to the covenants of the Company or the Events of Default for the benefit of the Holders of all or any series of Obligations or to surrender any right or power herein conferred upon the Company; or

H. to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions, with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the provisions of this Indenture, **PROVIDED** such action shall not, in the opinion of the Company, as evidenced by an Officers' Certificate delivered to the Trustee, adversely affect the interests of the Holders of the Obligations in any material respect; or

I. to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the TIA or under any similar federal statute hereafter enacted, to add to this Indenture such other provisions as may be expressly permitted by the TIA and to modify, eliminate or add to the provisions of this Indenture to the extent that any such provisions relating to requirements under the TIA have been modified or eliminated in the TIA after the date of this instrument, **EXCLUDING, HOWEVER,** the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any corresponding provision in any similar federal statute hereafter enacted; or

J. to add or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Obligations (i) in bearer form, registrable or not registrable as to principal and with or without interest coupons or (ii) in book-entry form; or

K. to increase the limit on the maximum amount of Additional Obligations which may be authenticated and delivery and Outstanding under this Indenture;

L. to make any change in the Indenture that, in the reasonable judgment of the Trustee, will not materially and adversely affect the rights or interests of any of the Holders. For purposes of this paragraph of this Section, any Supplemental Indenture will be presumed not to materially and adversely affect the rights or interests of any of the Holders if (1) this Indenture, as supplemented and amended by such Supplemental Indenture, secures equally and ratably the payment of principal of (and premium, if any) and interest on the Outstanding Secured Obligations which are to remain Outstanding and (2) subject to the last sentence of this paragraph, the Company shall furnish to the Trustee written evidence, from (i) the nationally recognized statistical rating organization or organizations then rating the Obligations (or other obligations primarily secured by Outstanding Secured Obligations) or (ii) if there are more than two (2) such organizations, at least two (2) of such organizations, that its ratings of the Outstanding Secured Obligations (or other obligations primarily secured by Outstanding Secured Obligations) that are not subject to Credit Enhancement will not be withdrawn or reduced as a result of the changes in the Indenture effected by such Supplemental Indenture; **PROVIDED, HOWEVER,** that the failure to qualify for the presumption set forth in this sentence shall not create any presumption to the contrary or be used to question the judgment of the Trustee and **PROVIDED, FURTHER,** that the provisions of this paragraph may not be used to amend or modify the items listed in paragraphs A through F of Section 12.2 hereof in any way that is inconsistent with the provisions of such Section 12.2. The Trustee may rely on the written

evidence of the nationally recognized statistical rating organization or organizations then rating the Obligations (or other obligations primarily secured by Outstanding Secured Obligations) with respect to credit matters relating to the Company to the extent that it deems such reliance to be appropriate.

#### **Section 12.2 Supplemental Indentures With Consent of Holders.**

With the consent of the Holders of not less than a majority in principal amount of the Obligations of all series then Outstanding affected by such Supplemental Indenture, by Act of such Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Obligations under this Indenture; **PROVIDED, HOWEVER**, that no such Supplemental Indenture shall, without the consent of the Holder of each Outstanding Obligation affected thereby,

A. change the Stated Maturity of the principal of, or any installment of interest on, any Obligation, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Obligation, or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date); or

B. reduce the percentage in principal amount of the Outstanding Obligations, the consent of whose Holders is required for any such Supplemental Indenture, or the consent of whose Holders is required for any waiver provided for in this Indenture of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences; or

C. modify or alter the provisions of the proviso to the definition of the term "Outstanding" or "Outstanding Secured Obligations"; or

D. modify any of the provisions of this Section, Section 8.12 or Section 8.17, except to increase any percentage provided thereby or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Obligation affected thereby; or

E. permit the creation of any lien (other than as permitted in this Indenture) ranking prior to or on a parity with the lien of this Indenture with respect to all or substantially all of the Trust Estate; or

F. modify, in the case of Obligations of any series for which a mandatory sinking fund is provided, any of the provisions of this Indenture in such manner as to affect the rights of the Holders of such Obligations to the benefits of such sinking fund.

The Trustee may in its discretion determine whether or not any Obligation would be affected by any Supplemental Indenture and any such determination shall be conclusive upon the Holder of all Obligations, whether theretofore or thereafter authenticated and delivered

hereunder, and the Trustee shall have no liability to any Holder of any Obligation for any such determination made in good faith.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed Supplemental Indenture, but it shall be sufficient if such Act shall approve the substance thereof.

### **Section 12.3 Execution of Supplemental Indentures.**

In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and, subject to Section 9.1, shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such Supplemental Indenture is authorized or permitted by this Indenture. The Trustee may, but shall not, except to the extent required in the case of a Supplemental Indenture entered into under Section 12.1I, be obligated to, enter into any such Supplemental Indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture.

### **Section 12.4 Effect of Supplemental Indentures.**

Upon the execution of any Supplemental Indenture under this Article, this Indenture shall be modified in accordance therewith and such Supplemental Indenture shall form a part of this Indenture for all purposes; and every Holder of Obligations theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

### **Section 12.5 Conformity with Trust Indenture Act.**

After qualification of this Indenture under the TIA, every Supplemental Indenture executed pursuant to this Article thereafter shall conform to the requirements of the TIA as then in effect.

### **Section 12.6 Reference in Obligations to Supplemental Indentures.**

Obligations authenticated and delivered after the execution of any Supplemental Indenture pursuant to this Article may, and if required by the Trustee or the Company shall, bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Indenture. If the Company shall so determine, new Obligations so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such Supplemental Indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Obligations.

## **ARTICLE XIII**

### **COVENANTS**

#### **Section 13.1 Payment of Principal, Premium and Interest.**

The Company will duly and punctually pay the principal of (and premium, if any) and interest on the Obligations in accordance with the terms of the Obligations and this Indenture.

#### **Section 13.2 Maintenance of Office or Agency.**

The Company will establish one or more Places of Payment where Obligations may be presented or surrendered for payment, where Obligations entitled to be registered, transferred, exchanged or converted may be presented or surrendered for registration, transfer, exchange or conversion and where notices and demands to or upon the Company in respect of the Obligations and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency. If at any time the Company shall fail to maintain such an office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the principal corporate trust office of the Trustee, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

#### **Section 13.3 Money for Obligation Payments to be Held in Trust; Repayment of Unclaimed Money.**

If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Obligations, segregate and hold in trust for the benefit of the Holders of such Obligations a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Holders or otherwise disposed of as herein provided, and the Company will promptly notify the Trustee in writing of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of the principal of (and premium, if any) or interest on any Obligations, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Holders of such Obligations entitled to such principal (and premium, if any) or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of its action or failure so to act.

Moneys so segregated or deposited and held in trust shall not be a part of the Trust Estate and shall not be deemed Trust Moneys but shall constitute a separate trust fund for the benefit of the Persons entitled to such principal, premium or interest. Except in the case of moneys so segregated by the Company when acting as its own Paying Agent, moneys held in trust by the Trustee or any other Paying Agent for the payment of the principal (or premium, if any) or interest on the Obligations need not be segregated from other funds, except to the extent required by law.



The Company will cause each Paying Agent other than the Company and Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

A. hold all sums held by it for the payment of principal of (and premium, if any) or interest on Obligations in trust for the benefit of the Holders of such Obligations until such sums shall be paid to the Holders or otherwise disposed of as herein provided;

B. give the Trustee notice of any default by the Company (or any other obligor upon the Obligations) in the making of any payment of principal (and premium, if any) or interest; and

C. at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all money held in trust by the Company or such Paying Agent, such money to be held by the Trustee upon the same trusts as those upon which such money was held by the Company or such Paying Agent; and, upon such payment by the Company, the Company shall be discharged from such trust, and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent or held by the Company in trust for the payment of the principal of (and premium, if any) or interest on any Obligation and remaining unclaimed for two (2) years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Obligation shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; PROVIDED, HOWEVER, that the Trustee or such Paying Agent, before being required to make any such payment to the Company, shall at the expense of the Company cause to be published once, in a newspaper of general circulation in each Place of Payment of such Obligation, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Company.

#### **Section 13.4 Ownership of Property.**

At the time of the execution and delivery of this instrument, the Company owns and holds the real property specifically described in Subdivision A of Granting Clause First in fee (or such other estate as may be specified) and owns and holds the other interests in real property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance other than Permitted Exceptions, and has full power and lawful authority to grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge,

set over and confirm such real property and interests in real property in the manner and form aforesaid.

The Company lawfully owns and is possessed of the personal property described in Granting Clauses First and Second (other than property of the Company acquired after the time of the execution and delivery of this Indenture), subject to no mortgage, lien, charge or encumbrance other than Permitted Exceptions, and has full power and lawful authority to grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm such personal property in the manner and form aforesaid.

The Company hereby does and will forever, at all times warrant and defend its ownership, as set forth above, of the real property and interests in real property described in Granting Clauses First and Second against all claims and demands of all Persons whomsoever, except Permitted Exceptions.

### **Section 13.5 After-Acquired Property; Further Assurances; Recording.**

All property of every kind, other than Excepted Property, acquired by the Company after the date hereof shall, immediately upon the acquisition thereof by the Company, and without any further mortgage, conveyance or assignment, become subject to the lien of this Indenture; **SUBJECT, HOWEVER,** to the exceptions permitted by Section 11.2B. Nevertheless, the Company will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as the Trustee shall require to subject such property to the lien of this Indenture.

The Company will cause this Indenture and all Supplemental Indentures and other instruments of further assurance, including all financing statements and continuation statements covering security interests in personal property, and all mortgages securing purchase money obligations delivered to the Trustee or to the trustee, mortgagee or other holder of a Prior Lien under Section 5.2 to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, and will execute and file such financing statements or cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of the Holders and the Trustee to the extent provided in this Indenture to all property constituting part of the Trust Estate. Furthermore, the Company will use its best efforts to cause all contracts of the type and duration set forth in Subparagraph C of Granting Clause First and acquired by the company after the date hereof to become subject to the lien of this Indenture. The Company will furnish to the Trustee:

A. promptly after the execution and delivery of each Supplemental Indenture or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this Indenture and such Supplemental Indenture and other instruments of further assurance have been properly recorded, registered and filed, or have been received for recording, registration or filing, to make effective the lien of this Indenture to the extent intended by this Indenture and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of the Holders and the Trustee hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make such lien effective; and

B. within one hundred-twenty (120) days after January 1 in each year beginning with the year 2010, an Opinion of Counsel, dated as of such date, either stating that, in the opinion of such Counsel, during the preceding calendar year, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Indentures, financing statements, continuation statements or other instruments of further assurance as is necessary to maintain the lien of this Indenture (including the lien on any property acquired by the Company after the execution and delivery of this instrument and owned by the Company at the end of the preceding calendar year) and stating that during the preceding calendar year, all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of the Holders and the Trustee hereunder, or stating that, in the opinion of such Counsel, during the preceding calendar year, no such action was necessary to maintain such lien.

Upon the cancellation and discharge of any Prior Lien, the Company will cause all cash, obligations and securities then held by the trustee, mortgagee or other holder of such Prior Lien, which were received by such trustee, mortgagee or other holder on account of the release or the taking by eminent domain or the purchase by a public authority or the sale by virtue of a designation or order of a public authority or any other disposition of, or insurance on, the Trust Estate, or any part thereof (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 VI.

### **Section 13.6 Limitations on Liens; Payment of Taxes.**

The Company will not create or incur or suffer or permit to be created or incurred or to exist any mortgage, lien, charge or encumbrance on or pledge of any of the Trust Estate prior to or upon a parity with the lien of this Indenture except Permitted Exceptions and except that:

A. The Company may create, incur or suffer to exist purchase money mortgages or other purchase money liens upon any real property acquired by the Company or acquire real property subject to mortgages and liens existing thereon at the date of acquisition, or acquire or agree to acquire and own personal property subject to or upon chattel mortgages, conditional sales agreements or other title retention agreements; **PROVIDED** that

(1) the principal amount of the indebtedness secured by each such mortgage, lien or agreement shall not exceed 80% of the Cost or Fair Value to the Company at the time of the acquisition thereof by the Company, whichever is less, as evidenced by an Officers' Certificate, of the property subject thereto, **PROVIDED** that if the property subject to such mortgage, lien or agreement is not necessary to the operations of the remaining portion of the System, the principal amount thereby secured may not exceed 100% of such Cost or Fair Value to the Company, whichever is less;

(2) the aggregate principal amount of all indebtedness of the Company at the time outstanding secured by such mortgages, liens and agreements (including extensions, renewals and replacements thereof, as provided by the paragraph B below, and also the indebtedness then being incurred) shall not exceed 15% of the aggregate principal amount of all Obligations then Outstanding; and

(3) each such mortgage, lien or agreement shall apply only to the property originally subject thereto, fixed improvements erected on any such real property or affixed to such personal property or equipment used in connection with such real or personal property, any contracts, licenses, permits and other property related solely to such real or personal property, and the proceeds thereof.

B. The Company may modify, extend, renew or replace any mortgage, lien or agreement permitted by paragraph A above upon the same property theretofore subject thereto, or modify, replace, renew or extend the indebtedness secured thereby, **PROVIDED** that in any such case the principal amount of such indebtedness so modified, replaced, extended or renewed shall not be increased above the limits described in paragraph A above.

The Company will pay or cause to be paid before they become delinquent all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Trust Estate or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Trustee or of the Holders in the Trust Estate, so that (to the extent aforesaid) the lien of this Indenture shall at all times be wholly preserved at the cost of the Company and without expense to the Trustee or the Holders; **PROVIDED, HOWEVER**, that the Company shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Company shall have established and shall maintain adequate reserves on its books for the payment of the same.

### **Section 13.7 Maintenance of Properties.**

The Company will cause all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; **PROVIDED, HOWEVER**, that nothing in this Section shall prevent the Company from discontinuing the operation and maintenance of any of its properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business and not disadvantageous in any material respect to the Holders.

The Company will promptly classify, and record on its books, as retired, all property that has permanently ceased to be used or useful in the business of the Company.

### **Section 13.8 To Insure.**

The Company will at all times keep all its property of an insurable nature and of the character usually insured by companies operating similar properties, insured in amounts customarily carried, and against loss or damage from such causes as are customarily insured against, by similar companies.

All such insurance shall be effected with responsible insurance carriers. All policies or other contracts for such insurance upon any part of the Trust Estate shall provide that the proceeds of such insurance (except in the case of any particular casualty resulting in damage or destruction not exceeding \$2,000,000 in the aggregate) shall be payable, subject to the requirements of any Prior Lien, to the Trustee as its interest may appear (by means of a standard mortgagee clause or other similar clause acceptable to the Trustee, without contribution). Each policy or other contract for such insurance, or such mortgagee clause, shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for the benefit of the Trustee for at least thirty (30) days after written notice to the Trustee of cancellation. As soon as practicable after the execution of this Indenture, and within ninety (90) days after the close of each calendar year thereafter, and at any time upon the request of the Trustee, the Company will file with the Trustee an Officers' Certificate containing a detailed list of the insurance in force upon the Trust Estate on a date therein specified (which date shall be within thirty (30) days of the filing of such Certificate), including the names of the insurers with which the policies and other contracts of insurance on the Trust Estate are carried, the numbers, amounts and expiration dates of such policies and other contracts and the property and hazards covered thereby, and stating that the insurance so listed complies with this Section, and the Trustee may conclusively rely on such Certificate.

Any appraisal or adjustment or any loss or damage of or to any part of the Trust Estate and any settlement in respect thereof which may be agreed upon between the Company and any insurer, as evidenced by an Officers' Certificate, shall be accepted by the Trustee.

All proceeds of insurance received by the Trustee shall be held and paid over or applied by the Trustee as provided in Article VI.

All proceeds of any insurance on any part of the Trust Estate not payable to the Trustee or the trustee, mortgagee or other holder of a Prior Lien shall be applied by the Company to the repair, rebuilding or replacement of the property destroyed or damaged or shall be deposited with the Trustee to be held and paid over or applied by it as provided in Article VI.

### **Section 13.9 Corporate Existence.**

Subject to Article XI, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; **PROVIDED, HOWEVER**, that the Company shall not be required to preserve any right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

### **Section 13.10 To Keep Books; Inspection by Trustee.**

The Company will keep proper books of record and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Obligations and the plant, properties, business and affairs of the Company in accordance with Accounting Requirements. The Company will, upon reasonable written notice by the Trustee to the Company and at the expense of the Company, permit the Trustee by its representatives to inspect



the plants and properties, books of account, records, reports and other papers of the Company, and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Company will furnish to the Trustee any and all information as the Trustee may reasonably request, with respect to the performance by the Company of its covenants in this Indenture; **PROVIDED, HOWEVER**, the Company shall not be required to make available any information supplied to it by a third party which is subject to a confidentiality agreement with such third party except to the extent allowed by, and subject to the terms of such confidentiality agreement.

#### **Section 13.11 Use of Trust Moneys and Advances by Trustee.**

If the Company shall fail to perform any of its covenants in this Indenture, the Trustee may (but shall not be obligated to) at any time and from time to time, after notice to the Company, use and apply any Trust Moneys held by it under Article VI, or make advances, to effect performance of any such covenant on behalf of the Company; and all moneys so used or advanced by the Trustee, together with interest at the lesser of (i) 10% per annum or (ii) the maximum rate permitted by law, shall be repaid by the Company upon demand and such advances shall be secured under this Indenture prior to the Obligations. For the repayment of all such advances the Trustee shall have the right to use and apply any Trust Moneys at any time held by it under Article VI but no such use of Trust Moneys or advance shall relieve the Company from any default hereunder. Nothing contained herein shall be deemed to obligate the Trustee to advance its own monies for any purpose.

#### **Section 13.12 Statement as to Compliance.**

The Company will deliver to the Trustee, within one hundred and twenty (120) days after the end of each calendar year beginning with the year 2010, a written statement signed by the principal executive officer and by the principal financial officer or principal accounting officer of the Company stating that a review of the Company's activities during the preceding calendar year has been made under their supervision and that the Company has fulfilled its obligations hereunder in all material respects during such calendar year.

Promptly after any Officer of the Company may reasonably be deemed to have knowledge of a default hereunder, the Company will deliver to the Trustee a written notice specifying the nature and period of existence thereof and the action the Company is taking and proposes to take with respect thereto.

#### **Section 13.13 Waiver of Certain Covenants.**

The Company may omit in any particular instance to comply with any covenant or condition set forth in this Article except Sections 13.1, 13.2, 13.3, 13.4, 13.5, 13.9, 13.10, 13.11 and the first sentence of Section 13.14 if before or after the time for such compliance the Holders of at least a majority in principal amount of all Obligations then Outstanding, shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived and, until such waiver shall become effective,

the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

#### **Section 13.14 Rate Covenant.**

The Company shall establish and collect rates, rents, charges, fees and other compensation (collectively, “**Rates**”) that, together with other moneys available to the Company, produce moneys sufficient to enable the Company to comply with all its covenants under this Indenture. Subject to any necessary regulatory approval or determination and the approval of the RUS, if required, the Company also shall establish and collect Rates that, together with other revenues available to the Company, are reasonably expected to yield a Margins for Interest Ratio for each fiscal year of the Company equal to at least 1.10 for such period. Promptly upon any material change in the circumstances which were contemplated at the time such Rates were most recently reviewed, but not less frequently than once every twelve (12) months, the Company shall review the Rates so established and shall promptly establish or revise such Rates as necessary to comply with the foregoing requirements; subject in the case of the foregoing Margins for Interest requirement to any necessary regulatory approval or determination and the approval of the RUS, if required. The Company will not furnish or supply or cause to be furnished or supplied any use, output, capacity or service of the System with respect to which a charge is regularly or customarily made, free of charge to any Person, and the Company will use commercially reasonable efforts to enforce the payment of any and all accounts owing to the Company with respect to the use, output, capacity or service of the System.

#### **Section 13.15 Distributions to Members.**

The Company shall not directly or indirectly declare or pay any dividend or make any payments of, distributions of, or retirements of, patronage capital to its members (each a “**Distribution**”) if, at the time thereof or after giving effect thereto, (i) an Event of Default shall exist, or (ii) the Company’s aggregate margins and equities (determined in accordance with Accounting Requirements) as of the end of the Company’s most recent fiscal quarter would be less than 20% of the Company’s total long-term debt and equities (determined in accordance with Accounting Requirements) at such time; or (iii) the aggregate amount expended for all Distributions on or after the date on which the Company’s aggregate margins and equities (determined in accordance with Accounting Requirements) first reached 20% of the Company’s long-term debt and equities (determined in accordance with Accounting Requirements) shall exceed 35% of the aggregate net margins (whether or not such net margins have since been allocated to members) of the Company earned after such date (subtracting, in the case of any deficit, 100% of such deficit). Notwithstanding the foregoing and so long as no Event of Default shall exist, the Company may declare and make Distributions at any time if, after giving effect thereto, the Company’s aggregate margins and equities (determined in accordance with Accounting Requirements) as of the end of the Company’s most recent fiscal quarter would have been not less than 30% of the Company’s total long-term debt and equities (determined in accordance with Accounting Requirements) as of such date..

### **Section 13.16 Limitation on Certain Cash Investments.**

The Company shall direct the Trustee to invest at least 75% of each of (i) Trust Moneys and (ii) Deposited Cash (as determined by the Company), in (a) Defeasance Securities, (b) securities issued by any agency or instrumentality of the United States of America or any corporation created pursuant to any act of the Congress of the United States, (c) commercial paper rated in either of the two highest rating categories by a national credit rating agency, (d) demand or time deposits, certificates of deposit and bankers' acceptances issued or accepted by any bank or trust company having capital surplus and undivided profits aggregating at least \$50,000,000 and whose long-term debt is rated in any of the three highest rating categories by a national credit rating agency, (e) any non-convertible debt securities rated in any of the three highest rating categories by a national credit rating agency, (f) repurchase agreements that are secured by a perfected security interest in securities listed in clauses (a) or (b) above entered into with a government bond dealer recognized as a primary dealer by the Federal Reserve Bank of New York or any bank described in clause (d) above, or (g) any short-term institutional investment fund or account which invests solely in any of the foregoing obligations.

## **ARTICLE XIV**

### **REDEMPTION OF OBLIGATIONS; SINKING FUNDS**

#### **Section 14.1 Applicability of Sections 14.1 Through 14.7.**

Obligations which are by their express terms redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise provided with respect to the Obligations of any particular series by the provisions of a Supplemental Indenture creating such series in accordance with Sections 14.1 through 14.7, inclusive. Except for the provisions of Section 14.11, the provisions of this Article do not apply to Obligations of which either RUS or CFC is the Holder.

#### **Section 14.2 Election to Redeem; Notice to Trustee.**

The election of the Company to redeem any Obligations shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company of less than all the Outstanding Obligations of any series, the Company shall, at least thirty (30) days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee) notify the Trustee of such Redemption Date and of the principal amount of Obligations of such series to be redeemed and of the numbers of any Outstanding Obligations of such series then owned by the Company.

#### **Section 14.3 Selection by Trustee of Obligations to be Redeemed.**

Unless otherwise provided in a Supplemental Indenture authorizing a particular series of Obligations, if less than all the Outstanding Obligations of any series or maturity within a series are to be redeemed, the particular Obligations to be redeemed shall be selected not more than thirty (30) days prior to the Redemption Date by the Trustee from the Outstanding Obligations of such series or maturity within a series which have not previously been called for redemption by prorating, as nearly as may be, the principal amount of Obligations of such series or maturity

within a series to be redeemed among the Holders of such Obligations in proportion to the aggregate principal amount of such Obligations registered in their respective names; **EXCEPT** that, if there shall have been previously filed with the Trustee an Act of all the Holders of such Obligations satisfactory to the Trustee specifying the method of selecting the Obligations to be redeemed, such selection shall be made by the Trustee in accordance with the terms of such Act.

In any proration pursuant to this Section, the Trustee shall make such adjustments, reallocations and eliminations as it shall deem proper to the end that the principal amount of Obligations of such series or maturity within a series so prorated shall be equal to the greater of \$1,000 and the smallest authorized denomination of the Obligations of such series, or a multiple thereof, by increasing or decreasing or eliminating the amount which would be allocable to any Holder on the basis of exact proportion by an amount not exceeding such prorated minimum.

The Trustee in its discretion may determine the particular Obligations (if there is more than one) registered in the name of any Holder which are to be redeemed, in whole or in part.

The Trustee shall promptly notify the Company in writing of the Obligations selected for redemption and, in the case of any Obligation selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Obligations shall relate, in the case of any Obligation redeemed or to be redeemed only in part, to the portion of the principal of such Obligation which has been or is to be redeemed.

#### **Section 14.4 Notice of Redemption.**

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than twenty (20) nor more than sixty (60) days prior to the Redemption Date, to each Holder of Obligations of such series to be redeemed, at his address appearing in the Obligation Register.

All notices of redemption shall state:

- A. the CUSIP number (if any) of all Obligations to be redeemed,
- B. the Redemption Date,
- C. the Redemption Price,
- D. the principal amount of Obligations of each series to be redeemed, and, if less than all Outstanding Obligations of a series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Obligations of such series to be redeemed,
- E. that on the Redemption Date the Redemption Price of each of the Obligations to be redeemed will become due and payable and that the interest thereon shall cease to accrue from and after said Redemption Date,

F. the place or places where the Obligations of each series to be redeemed are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Company in each Place of Payment for such series,

G. if it be the case, that such Obligations are to be redeemed by the application of certain specified Trust Moneys, and

H. if it be the case, that such redemption is to satisfy sinking fund requirements.

Notice of redemption of Obligations to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

#### **Section 14.5 Deposit of Redemption Price.**

Prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 13.3) an amount of money sufficient to pay the Redemption Price of all the Obligations which are to be redeemed on that date. Such money shall be held in trust for the benefit of the Persons entitled to such Redemption Price and shall not be deemed to be part of the Trust Estate or Trust Moneys.

Subject to the requirements of any Supplemental Indenture, the Company may determine what sinking fund requirements (if any) to apply redeemed Obligations against.

#### **Section 14.6 Obligations Payable on Redemption Date.**

Notice of redemption having been given as aforesaid, the Obligations so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Obligations shall cease to bear interest. Upon surrender of any such Obligation for redemption in accordance with said notice, such Obligation shall be paid by the Company at the Redemption Price. Installments of interest with a Stated Maturity on or prior to the Redemption Date shall be payable to the Holders of the Obligations registered as such on the relevant Record Dates according to the terms of such Obligations and the provisions of Section 3.7.

If any Obligation called for redemption shall not be so paid upon surrender thereof for redemption or as otherwise provided under Section 14.7 in lieu of surrender, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Obligation.

#### **Section 14.7 Obligations Redeemed in Part.**

Unless otherwise provided in any Supplemental Indenture, any Obligation which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney



duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Obligation, without service charge, a new Obligation or Obligations of the same series and maturity of any authorized denomination or denominations as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Obligation so surrendered.

In lieu of surrender under the preceding paragraph, payment of the Redemption Price of a portion of any Obligation held in the Book-Entry System may be made directly to the Holder thereof without surrender thereof if there shall have been filed with the Trustee either (i) a written agreement between the Company and such Holder and, if such Holder is a nominee, the Person for whom such Holder is a nominee, that payment shall be so made and that such Holder will not sell, transfer or otherwise dispose of such Obligation unless prior to delivery thereof such Holder shall present such Obligation to the Trustee for notation thereon of the portion of the principal thereof redeemed or shall surrender such Obligation in exchange for a new Obligation or Obligations for the unredeemed balance of the principal of the surrendered Obligation or (ii) a certificate of the Company that such an agreement has been entered into and remains in force.

#### **Section 14.8 Applicability of Sections 14.8 Through 14.10.**

The provisions of Sections 14.8 through 14.10, inclusive, shall be applicable to any sinking fund for the retirement of Obligations except as otherwise specified as contemplated by Section 3.3 for Obligations of such series.

The minimum amount of any sinking fund payment provided for by the terms of Obligations of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Obligations of any series is herein referred to as an "optional sinking fund payment." If provided for by the terms of Obligations of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 14.9. Each sinking fund payment shall be applied to the redemption of Obligations of any series as provided for by the terms of Obligations of such series.

#### **Section 14.9 Satisfaction of Sinking Fund Payments with Obligations.**

The Company (1) may deliver Outstanding Obligations of a series (other than any previously called for redemption) and (2) may apply, as a credit, Obligations of a series which have been redeemed either at the election of the Company pursuant to the terms of such Obligations or through the application of permitted optional sinking fund payments pursuant to the terms of such Obligations, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Obligations of such series required to be made pursuant to the terms of such Obligations as provided for by the terms of such series; **PROVIDED** that such Obligations have not been previously so credited. Such Obligations shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Obligations for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

### **Section 14.10 Redemption of Obligations for Sinking Fund.**

Not less than sixty (60) days prior to each sinking fund payment date for any series of Obligations, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Obligations of that series pursuant to Section 14.9 and will also deliver to the Trustee any Obligations to be so delivered. Not less than thirty (30) days before each such sinking fund payment date the Trustee shall select the Obligations to be redeemed upon such sinking fund payment date in the manner specified in Section 14.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 14.4. Such notice having been duly given, the redemption of such Obligations shall be made upon the terms and in the manner stated in Sections 14.6 and 14.7.

### **Section 14.11 Prepayment of Certain Obligations.**

Any Existing Obligation or Additional Obligation as to which RUS is the Holder shall be redeemable or prepayable in accordance with the provisions of such Obligation or any applicable existing or future law. Any Existing Obligation or Additional Obligation as to which CFC is the Holder shall be redeemable or prepayable in accordance with the provisions of such Obligation.

## **ARTICLE XV**

### **CONTROL OF PLEDGED SECURITIES**

#### **Section 15.1 Pledged Securities Deposited with Trustee.**

Any Stock and certificates representing the same and any obligations and indebtedness and evidences thereof and any other securities which are at the time deposited with the Trustee or required to be deposited and pledged with the Trustee are herein sometimes collectively called the "**Pledged Securities.**"

As and when any Pledged Securities shall come into the possession of the Company or under its control, the Company shall forthwith deposit and pledge the same with the Trustee, together with such proper instruments of assignment and transfer as the Trustee may reasonably require, which shall include express authority to the Trustee to vote any Stock included therein to the extent herein provided or permitted and to cause such authority to be recorded in the entry of transfer of such Stock on the books of the entity issuing the same.

The Trustee shall not be obliged at any time to accept any Pledged Securities or to cause or to permit a transfer thereof to be made to it, if, in the opinion of the Trustee, such action would subject it to the risk of any liability or expense, unless the Trustee shall be indemnified to its satisfaction for so doing.

The Trustee shall not be under any duty to examine into or pass upon the validity or genuineness of any of the Pledged Securities. The Trustee shall be entitled to assume that any

Pledged Securities are genuine and valid and what they purport to be and that any endorsements or assignments thereof are genuine and valid.

### **Section 15.2 Form of Holding.**

The Trustee may hold any Pledged Securities in bearer form or in the name of the Trustee or any nominee or nominees of the Trustee or (unless an Event of Default exists or the Holders of a majority in principal amount of the Obligations then Outstanding otherwise direct) in the name of the Company or any nominee or nominees of the Company, endorsed or assigned in blank or in favor of the Trustee. The Trustee may deliver any of the Pledged Securities to the Company for a period of not more than twenty-one (21) days or to the issuer thereof for the purpose of making exchanges or registrations of transfers or for such other purposes in furtherance of this trust as the Trustee may deem advisable.

### **Section 15.3 Right of Trustee to Preserve Issuers; Directors' Qualifying Shares.**

The Trustee may do whatever in its judgment may be necessary for the purpose of preserving or extending the legal existence of any entity whose Stock are included in the Pledged Securities, but (subject to Section 9.1) it shall be under no duty to take any action in respect thereof. Upon Company Request stating that the Company has no shares for the purpose under its control other than shares held hereunder, the Trustee shall transfer or permit the Company to transfer as many shares of stock as may be necessary to qualify the requisite number of persons to act as directors of or in any other official relation to the corporation issuing such shares; **PROVIDED, HOWEVER**, that no such transfer of the stock of any Pledged Subsidiary shall be made which would change the status of the issuing corporation as a Pledged Subsidiary. In every such case the Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder in respect of the shares so transferred. While such shares remain so transferred they shall not be deemed to be Pledged Securities, but when such shares are no longer needed for such qualification purposes they shall immediately be redeposited and repledged and thereupon again become Pledged Securities.

### **Section 15.4 Income Before Event of Default.**

Unless an Event of Default exists, the Company from time to time shall be entitled to receive and collect for its own use all interest paid on any Pledged Security (other than any such interest which shall have been collected or paid out of the proceeds of any sale or condemnation or expropriation of any property covered by a mortgage or other lien securing such Pledged Security) and all dividends on any Pledged Security which are paid in cash out of the net profits or earned surplus of the issuing corporation accrued since the date of deposit and pledge of such Pledged Security with the Trustee hereunder. The Trustee from time to time shall execute and deliver upon Company Request suitable orders in favor of the Company or its nominee for the payment of such interest and cash dividends and shall deliver upon Company Request any and all coupons held by the Trustee representing such interest as the date of the maturity thereof approaches. The Trustee shall likewise pay over all sums which are received or collected by it as such interest or cash dividends. Until actually paid, all rights to such interest or cash dividends shall remain subject to the lien hereof.

The Trustee shall be entitled (subject to Section 9.1) to assume that any cash dividend received by it on any Pledged Security is paid out of the net profits or earned surplus of the issuing corporation accrued since the date of deposit and pledge of such Pledged Security with the Trustee hereunder and that any interest has not been collected or paid out of the proceeds of any such sale or condemnation or expropriation, unless and until notified in writing to the contrary by any Holder or the Company or the person making such payment, in which event the Trustee may (subject to Section 9.1) accept an Officers' Certificate stating any pertinent facts in connection with any such dividend or interest as conclusive evidence of such facts.

#### **Section 15.5 Income After Event of Default.**

If an Event of Default exists, in addition to the other remedies herein provided, the Trustee shall collect and receive all interest and dividends on Pledged Securities and shall cancel and revoke all interest and dividend orders in favor of the Company or its nominee. All money so received by the Trustee which, in the absence of an Event of Default, would be receivable by the Company under Section 15.4, shall be applied in accordance with Section 8.7.

In every such case, after all Events of Default have been cured, the right of the Company to receive and collect interest and dividends, and the duty of the Trustee with respect thereto, under Section 15.4, shall revive and continue; and the Trustee shall pay over upon Company Request any such interest or dividends received by it which, in the absence of an Event of Default, would be receivable by the Company under Section 15.4 and then remain unexpended in its hands.

#### **Section 15.6 Principal and Other Payments.**

In case any sum shall be paid on account of

- A. the principal of (or premium, if any, on) any Pledged Security, or
- B. any dividend upon any Pledged Security other than a cash dividend paid out of the net profits or earned surplus of the issuing corporation accrued since the date of deposit and pledge of such Pledged Security with the Trustee hereunder, or
- C. the liquidation or dissolution or reduction of capital of the corporation issuing any Pledged Security, or
- D. interest on any Pledged Security which shall have been collected or paid out of the proceeds of any sale or condemnation or expropriation of any property covered by a mortgage or other lien securing such Pledged Security,

or in case any other distribution (including stock dividends but excluding any dividend excluded by subsection B) shall be made in respect of any Pledged Security, such sum or other distribution shall be paid or delivered to the Trustee to be held as a part of the Trust Estate.

In case the Company or the Trustee shall receive rights to subscribe to additional securities in respect of any Pledged Securities, the Company may exercise or (subject to Section 15.8) sell such rights in its discretion, **PROVIDED, HOWEVER**, that (i) all securities

acquired by exercise of such rights shall forthwith be deposited and pledged with the Trustee hereunder, (ii) all net proceeds from the sale of any such rights shall forthwith be paid to the Trustee, (iii) if the Company shall not have elected to exercise or sell such rights by the fifth (5th) business day prior to the expiration thereof, it shall give the Trustee notice thereof and the Trustee shall forthwith sell or, in the event that Section 15.8 is applicable, may exercise such rights in such manner as in its uncontrolled discretion it may deem advisable and (iv) if an Event of Default exists, the Trustee shall be entitled at any time in its discretion to exercise or sell such rights.

### **Section 15.7 Voting.**

Unless an Event of Default exists, the Company shall have the right to vote and give consents with respect to all Pledged Securities and from time to time, in case any Pledged Securities have been transferred into the name of the Trustee or its nominee or nominees, the Trustee, upon Company Request, shall execute and deliver or cause to be executed and delivered to the Company or its nominee appropriate powers of attorney or proxies to vote such Pledged Securities or to execute a waiver or consent with respect thereto, for such purpose or purposes as may be specified in such request; PROVIDED, HOWEVER, that such right of the Company shall not include (and every such power of attorney or proxy shall be limited, either generally or specifically, to provide in effect that the powers thereby conferred do not include) any power to vote for or to authorize or consent to any act or thing inconsistent with or in avoidance of the Company's obligations under this Indenture.

If an Event of Default exists, the Trustee may in its discretion, and if requested by the Holders of a majority in principal amount of the Obligations then Outstanding and provided with an indemnity reasonably satisfactory to it shall, revoke all such powers of attorney and proxies and the Trustee may in its discretion vote and exercise, or cause the nominee or nominees of the Trustee to vote and exercise, all the powers of an owner with respect to any Pledged Securities. In so voting and exercising the powers of an owner with respect to any Pledged Securities, the Trustee shall not be required to attend any meeting of security holders, but the Trustee may vote or act by power of attorney or proxy and such power of attorney or proxy may be granted to any person selected by the Trustee, including an Officer of the Company. The Trustee may so vote and exercise the powers of an owner with respect to any Pledged Securities for any purpose or purposes which the Trustee, in its discretion, shall deem advisable and in the interest of the Holders, whether or not such action may involve a change in the character of any Pledged Security or in the corporate identity or business of the issuer thereof or in the proportionate interest or voting power represented by such security. In every such case, after all Events of Default have been cured, the right of the Company to vote and give consents with respect to the Pledged Securities, and the duty of the Trustee to execute powers of attorney and proxies as hereinabove provided, shall revive and continue.

### **Section 15.8 Limitations on Issue of Voting Stock or Grant of Membership Interests of Pledged Subsidiaries.**

The Company will not permit any Pledged Subsidiary to issue any additional shares of Voting Stock, other than stock dividends, unless simultaneously there shall be made effective provision that certificates for all such additional Voting Stock, forthwith upon the issue thereof,



will be deposited and pledged with the Trustee; **PROVIDED, HOWEVER**, that, if the, holders of any stock of such Pledged Subsidiary not then included in the Pledged Securities shall have a preemptive right to subscribe for and purchase their pro rata share of such additional shares of Voting Stock, then such part of such additional shares as shall be actually subscribed for and purchased by such stockholders pursuant to such preemptive right may be issued to them and need not be deposited and pledged with the Trustee. The Company will not permit any Pledged Subsidiary to grant any additional membership interests, unless simultaneously there shall be made effective provision that certificates evidencing all such additional membership interests, forthwith upon the granting thereof, will be deposited and pledged with the Trustee.

**Section 15.9 Increase, Reduction or Reclassification of Stock; Dissolution; Consolidation, etc.**

Except as otherwise provided in Article XIII or this Article, the capital stock of any corporation whose shares are included in the Pledged Securities may be increased (subject to Section 15.8) or reduced or reclassified (other than a reclassification resulting in the creation of a preferred stock of any Pledged Subsidiary or a reclassification reducing the proportionate voting power of any Pledged Securities in any corporation) and any such corporation may be dissolved; **PROVIDED, HOWEVER**, that effective provision shall (to the extent the Company has any control of such matters) be made that, in the case of any such increase, whether by stock dividend or otherwise (subject to Section 15.8), certificates for such part of each class of additional stock as shall be proportionate to the part of the entire issued and outstanding capital stock of such class of such corporation previously deposited and pledged with the Trustee and, in the case of any such reclassification, any distribution in connection therewith shall be deposited and pledged with the Trustee and that, in the case of any such reduction, there shall continue to be deposited and pledged with the Trustee certificates for not less than the same proportion of such class of capital stock deposited and pledged with the Trustee before such reduction. The Trustee may make any exchange, substitution, cancellation or surrender of certificates of stock held by it for the purpose of such increase, reduction, reclassification or dissolution. Prior to any such cancellation or surrender of stock certificates for the purpose of dissolution, the share, if any, of all the assets of the corporation so dissolved which is distributable in respect of the Pledged Securities (excluding Excepted Property) shall be subjected to the lien of this Indenture. The Trustee shall be entitled to receive and shall (subject to Section 9.1) be fully protected in relying upon an Officers' Certificate as to the amount of the share of the assets of any corporation dissolved as aforesaid which is so distributable to the holder of such Pledged Securities.

The deposit and pledge with the Trustee at any time of any shares of stock of any corporation shall not prevent any one or more of the following transactions:

A. subject to the provisions of Articles X and XI, the merger or consolidation of any Pledged Subsidiary into or with the Company or the conveyance or transfer of all or any of the assets of any Pledged Subsidiary to the Company, or

B. the merger or consolidation of any corporation, any of whose shares may be Pledged Securities, into or with any other corporation other than the Company, or the conveyance or transfer of all or any of the assets of any corporation, any of whose shares may be

Pledged Securities, to any other corporation other than the Company; **PROVIDED, HOWEVER,** that no such action involving a Pledged Subsidiary shall be taken unless the corporation resulting from such consolidation, or into which such merger shall be made, or which shall have acquired the assets of a Pledged Subsidiary, shall thereupon be a Pledged Wholly-Owned Subsidiary.

#### **Section 15.10 Enforcement.**

In case default shall be made in the payment of the principal of or interest on any Pledged Security or in the due performance of any covenant contained in any Pledged Security or the instrument securing the same, then and in any such case (without prejudice, however, to any right to claim a default under this Indenture or to assert any right consequent upon such default) the Trustee, upon Company Request, may, in its discretion and upon receipt of indemnity to its satisfaction, cause, or join with other owners of like securities in causing, such proceedings as may be approved by the Trustee to be instituted and prosecuted to collect such principal and interest or enforce the performance of such covenant. If an Event of Default exists, the Trustee may, and upon the written request of the Holders of a majority in principal amount of the Obligations then Outstanding shall, upon receipt of indemnity to its satisfaction, institute such proceedings without Company Request.

#### **Section 15.11 Acquisition of Property of Issuers of Pledged Securities.**

In case, at any time, all or any of the property of any corporation, any of whose securities are at the time Pledged Securities, shall be sold upon insolvency or foreclosure or otherwise, then and in such event, if the property of such corporation or the property sold can be acquired by crediting on any of the Pledged Securities any sum accruing or to be received thereon out of the proceeds of such property, the Trustee in its discretion may, and if requested by Company Request or by the Holders of a majority in principal amount of the Obligations then Outstanding and provided by the Company or such Holders the amount of any cash necessary therefor shall, purchase such property or cause the same to be purchased, either in the name of the Trustee or the Company or a purchasing trustee or trustees as the Trustee may determine, and shall use or permit the Company or such purchasing trustees to use such Pledged Securities so far as necessary to make payment for such property. In case of any such purchase the Trustee shall take such steps as it may deem proper to cause the property so purchased to be vested in the Company subject to the lien of this Indenture, or in some other corporation organized or to be organized with power to acquire and manage such property, or partly in the Company and partly in such other corporation, as the Company may deem advisable, **PROVIDED** that all debt of such corporation with a maturity more than one year from date of issuance (except such, if any, as shall represent a lien existing upon the property at the time it was acquired) and certificates for all the capital stock (except directors' qualifying shares) of such corporation shall be deposited and pledged with the Trustee. In case the property so sold shall not be purchased in the manner hereinabove in this Section provided, the Trustee shall receive the proceeds of sale accruing on and apportioned to such Pledged Securities and such proceeds shall be held and paid over or applied by the Trustee as provided in Article VI.

### **Section 15.12 Reorganization.**

With Company Consent, the Trustee may join in any plan of voluntary or involuntary reorganization or readjustment or rearrangement in respect of any Pledged Securities and may accept or authorize the acceptance of new securities issued in exchange therefor under any such plan. If an Event of Default exists, the Trustee shall be entitled to take such steps without Company Consent.

Any new securities so issued shall be deposited and pledged with the Trustee under this Indenture. If the Trustee does not join in such plan or reorganization or readjustment or rearrangement, the Trustee shall receive any moneys accruing on or apportioned to such Pledged Securities and such moneys shall be held and paid over or applied by the Trustee as provided in Article VI.

### **Section 15.13 Renewal and Refunding.**

Nothing contained in this Article shall prevent

A. the renewal or extension, without impairment of lien or security, at the same or at a lower or higher rate of interest, of any of the obligations or indebtedness of any corporation included in the Pledged Securities, or

B. the issue in substitution for any such obligations or indebtedness of other obligations or indebtedness of such corporation for equivalent amounts and of substantially equal or superior rank as to security, if any;

**PROVIDED, HOWEVER,** that every such obligation or indebtedness as so renewed or extended shall continue to be subject to the lien hereof and every substituted obligation or indebtedness and the evidence thereof shall be deposited and pledged with the Trustee. Except as otherwise provided in Article XIII, unless an Event of Default exists, the Trustee upon receipt of a Company Request shall, and if an Event of Default exists the Trustee may without such Company Request, consent to any such renewal, extension or substitution.

### **Section 15.14 Expenses.**

On demand of the Trustee, the Company forthwith will pay or satisfactorily provide for all expenses incurred by the Trustee under this Article, including all expenditures (except as otherwise provided in Section 15.11) made to acquire the ownership and title to any property which the Trustee shall purchase or shall cause or authorize to be purchased under this Article. Without impairment of or prejudice to any of its rights hereunder by reason of any default of the Company, the Trustee in its discretion may (but shall not be obligated to) advance all such expenses and other sums required or may procure such advances to be made by others. The Company will repay all such advances, with interest thereon at the rate of 10% per annum, and for all such advances the Trustee shall be secured by a lien on the Trust Estate prior to the Obligations. For the repayment of all such advances the Trustee shall have the right to use and apply any Trust Moneys held by it under Article VI as part of the Trust Estate.

### **Section 15.15 Opinion of Counsel.**

The Trustee shall be entitled, before taking any action under this Article, to receive an Opinion of Counsel stating the legal effect of any transaction relating to the Pledged Securities and the steps necessary to be taken to consummate the same and stating also that such action is in compliance with the provisions hereof and will not materially adversely effect the security of the Holders hereunder in contravention of the provisions hereof. Such Opinion of Counsel shall (subject to Section 9.1) be full protection to the Trustee for any action taken or omitted to be taken by it in reliance thereon.

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

*(Signatures begin on next page.)*

Company:  
201 Third Street  
Henderson, KY 42420

**BIG RIVERS ELECTRIC CORPORATION**, a  
cooperative corporation organized under the laws of  
the Commonwealth of Kentucky

By: Mark A. Bailey  
Name: Mark A. Bailey  
Title: President and CEO

Attest: C. William Blackburn  
Name: C. William Blackburn  
Title: Senior Vice President and CFO  
[CORPORATE SEAL]

COMMONWEALTH OF KENTUCKY   §  
  §  
COUNTY OF Henderson       §

This instrument was acknowledged before me on this 12th day of May, 2009,  
by Mark Bailey Pres./CEO of Big Rivers Electric Corporation, a Kentucky cooperative  
corporation, on behalf of said cooperative corporation.

Paula Mitchell  
Notary Public's Signature  
Notary-Kentucky, State at Large  
My commission expires: 1-12-13

(Seal)

[Indenture]



Trustee:  
U.S. Bank National Association  
225 Asylum Street  
Hartford, Connecticut 06103

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

By: 

Name: Philip G. Kane, Jr.  
Title: Vice President

Attest: 

Name: Maryanne Y. Dufresne  
Title: Vice President

STATE OF CONNECTICUT

§

§

COUNTY OF HARTFORD

§

I, Arthur L. Blakeslee IV, a Notary Public, in and for the State of Connecticut, hereby certify that Philip G. Kane, Jr., whose name as Vice President of **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as Trustee, is signed to the foregoing instrument and who is known to me, acknowledged before me this day that being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said national banking association.

Given under my hand this 13<sup>th</sup> day of May, 2009.



Notary Public

(Notary Seal)

My commission expires \_\_\_\_\_, 200[ ]

**Arthur L. Blakeslee, IV**  
Notary Public  
My Commission Expires 06/30/2009

[Indenture]

**INDENTURE  
EXHIBIT**

**EXHIBIT A  
SCHEDULE OF MORTGAGED PROPERTY**

**HENDERSON COUNTY - OFFICE HEADQUARTERS BUILDING**  
**(150' x 135')**

A certain tract of land described in a certain deed, dated September 2, 1964, from the United States of America, Administrator of General Services, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 216, page 228.

**HENDERSON COUNTY - PARKING LOT - MAIN & FOURTH STREETS**  
**(51' x 130')**

A certain tract of land described in a certain deed, dated March 29, 1971, from Paul Herron, Sr. and wife, Dorothy Herron, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 252, page 468.

SUBJECT to easement of 10' granted to the City of Henderson, Kentucky, by instrument dated June 11, 1971, by Big Rivers Rural Electric Cooperative Corporation, and recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 253, page 428. This easement given to maintain sewers and appurtenance structures.

**HENDERSON COUNTY - WAREHOUSE - FOURTH STREET**  
**(50' x 80')**

A certain tract of land described in a certain deed, dated March 25, 1974, from Paul Herron, Sr. and wife, Alice Herron, Paul Herron, Jr., and wife, Mary J. Herron, and Dorothy T. Herron, unmarried, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky in Deed Book 271, page 205.

**HENDERSON COUNTY - PARKING LOT - MAIN & THIRD STREETS**  
**(110' x 210')**

A certain tract of land described in a certain deed, dated February 27, 1979, from Imperial Medical Center, Inc., a Kentucky corporation, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 311, page 276. The parties agree that this deed is subject to an agreement entered into on November 25, 1974, between the grantor herein and Miss Mary E. Davis, concerning Mary E. Davis' right to use two (2) parking spaces on the subject property.

**HENDERSON COUNTY - AIRLINE ROAD WAREHOUSE**  
**(6.55 ACRES)**

A certain tract of land described in a certain deed, dated October 27, 1977, from the Firestone Tire & Rubber Company, a corporation, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, conveying 6.55 acres in Deed Book 299, page 239. There is reserved from the above described grant a perpetual easement for the benefit of grantor, its successors and assigns in a seventy-five (75) foot wide strip of land running from the Airline Road to grantor's remainder tract. Said perpetual easement shall be for purposes of ingress and egress to and from grantor's remainder tract; for construction and maintenance of roadways, railways, pipelines, aboveground and underground utilities services and general access to and from grantor's remainder tract and Kentucky 812 (Airline Road), Henderson County, Kentucky. Grantee, its successors and assigns shall have the use and enjoyment of said easement but without right to unreasonably interfere with the rights reserved therein by grantor, its successors and assigns. This conveyance is subject to all existing public utility and roadway easements of record.

**REID PLANT SITE**

**HENDERSON COUNTY**  
**(32.7 ACRES)**

A certain tract of land described in a certain deed, dated April 14, 1977, from Peabody Coal Company, a Delaware corporation, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 293, page 616.

**HENDERSON AND WEBSTER COUNTIES**  
**(140.47 ACRES)**

A certain tract of land described in a certain deed dated June 24, 1963 from Walker Rideout, an unmarried man, recorded in the Office of the Clerk of the Webster County Court, in the State of Kentucky, in Deed Book 126, page 277; and recorded in the Office of the Clerk of the County Court of Henderson County, in the State of Kentucky, in Deed Book 211, page 56.

SUBJECT to right-of-way easement 20 feet wide conveyed by Big Rivers Rural Electric Cooperative Corporation to Oeth Drilling Company, by instrument dated September 6, 1963 and recorded in the Office of the Clerk of the County Court of Henderson County, in the State of Kentucky, in Deed Book 211, page 552.

SUBJECT to pipe line easement conveyed by Big Rivers Rural Electric Cooperative Corporation to Owensboro Ashland Company, by instrument dated August 20, 1970, and recorded in the Office of the Clerk of the County Court of Henderson County, in the State of Kentucky, in Deed Book 249, page 196.

FURTHER SUBJECT to easement granted to Commonwealth of Kentucky per permanent and temporary easements, by Big Rivers R.E.C.C. by instrument dated May 8, 1967 and recorded in Deed Book 230, page 466, and covering Parcels 845 and 845A.

Less and Except a tract of land conveyed by Big Rivers to Anaconda Aluminum by deed of record in Deed Book 259, page 177, Office of the Henderson County Court Clerk.

Less and Except a 2.248 acre tract conveyed by Big Rivers to City of Henderson by deed dated March 18, 1971 of record in Deed Book 252, page 392, Office of the Henderson County Court Clerk.

Less and Except a 1.697 acre tract conveyed by Big Rivers by Deed of Correction dated December 9, 1971 of record in Deed Book 258, page 94, Office of the Henderson County Court Clerk.

**HENDERSON COUNTY**  
**(Parcel 845 and 845A)**

A certain tract of land described in a certain deed dated January 10, 1972, from the Commonwealth of Kentucky, through Commissioner of Finance of the Commonwealth of Kentucky, to Big Rivers Rural Electric Cooperative Corporation and recorded in

the Office of the Clerk of the Henderson County Court in the State of Kentucky, in Deed Book 257, page 275.

**HENDERSON AND WEBSTER COUNTIES**  
**(91.08 ACRES)**

A certain tract of land described in a certain deed, dated June 25, 1963 from Maud Watson, widow, Rufus H. Watson and wife, Virginia Watson, Roy Watson and Cora Watson, his wife, Gustene Floyd and husband, Vaughn Floyd, Eloise Shelton and husband, Albert Shelton, Sherman Duncan, unmarried, Hattie E. McCollum and husband Thomas McCollum, Cora Inez Bottomley and husband, Leonard Bottomley, Charles Duncan, unmarried, Emma Louise Goyer and husband, John E. Goyer, Edith Bramow and husband, L.H. Bramow, and Alice Frances Kuhlmeier and husband, John Kuhlmeier, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 211, page 180 and recorded in the Office of the Clerk of Webster County Court Clerk, in the State of Kentucky, in Deed Book 126, page 374.

A certain tract of land described in a certain deed, dated September 27, 1962, from Hattie E. McCollum and husband, Thomas McCollum, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 212, page 23, and recorded in the Office of the Clerk of Webster County, in the State of Kentucky, in Deed Book 127, page 190.

A certain tract of land described in a certain deed, dated December 14, 1963, from James A. Newman, Special Commissioner of Henderson County Court, appointed for the purpose of conveying John Kuhlmeier's right and interest, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 213, page 20, and recorded in the Office of the Clerk of Webster County, in the State of Kentucky, in Deed Book 127, page 274.

SUBJECT to easement, for ingress and egress to Green River, conveyed by Big Rivers Electric Cooperative Corporation to Panama Coal Company, over a tract of 51.13 acres, dated January 24, 1964, and recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 213, page 371.

Less and Except a tract of land conveyed by Big Rivers to Anaconda Aluminum by deed of record in Deed Book 259, page 177, Office of the Henderson County Court Clerk.



### **MINERALS UNDER 91.08 ACRES**

A certain tract of land described in a certain deed, dated June 25, 1963, from Maud Watson, widow, Rufus H. Watson and wife, Virginia Watson, Roy Watson and wife, Cora Watson, Gustene Floyd and husband, Vaughn Floyd, Eloise Shelton and husband, Albert Shelton, Sherman Duncan, unmarried, Hattie E. McCollum and husband Thomas McCollum, Cora Inez Bottomley and husband, Leonard Bottomley, Charles Duncan, unmarried, Emma Louise Goyer and husband, John E. Goyer, Edith Bramow and husband, L.H. Bramow, and Alice Frances Kuhlmeier and husband, John Kuhlmeier, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 211, page 200, and recorded in the Office of the Clerk of the County Court of Webster County, in the State of Kentucky, in Deed Book 126, page 368.

A certain tract of land described in a certain deed, dated September 27, 1963, from Hattie E. McCollum and husband, Thomas McCollum, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 212, page 25, and recorded in the Office of the Clerk of the County Court of Webster County, in the State of Kentucky, in Deed Book 127, page 193.

A certain tract of land described in a certain deed, dated May 21, 1964, from James A. Newman, Special Commissioner of Henderson County Court, who conveys for and on behalf of Edith Bramow and husband, L.H. Bramow, and Alice Frances Kuhlmeier and husband, John Kuhlmeier, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 215, page 3.

### **COAL RIGHTS UNDER 84 ACRES**

A certain tract of land described in a certain deed, dated January 23, 1964, from Panama Coal Company, a Kentucky Corporation, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 213, page 343, and recorded in the Office of the Clerk of Webster County, in the State of Kentucky in Deed Book 127, page 453.

SAVING AND EXCEPTING FROM THE RIDEOUT AND  
WATSON TRACTS THE FOLLOWING CONVEYANCES BY  
BIG RIVERS RURAL ELECTRIC COOPERATIVE

CORPORATION and/or BIG RIVERS ELECTRIC  
CORPORATION:

- A. That certain tract of land described in a certain deed, dated March 18, 1971, from Big Rivers Rural Electric Cooperative Corporation, as grantor, to the City of Henderson, Kentucky, a municipal corporation and recorded in Deed Book 252, page 392, in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 151, page 203 in the Office of the Clerk of Webster County, in the State of Kentucky, and by Deed of Correction dated December 9, 1971, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 258, page 94, and in the Office of the Clerk of Webster County, in the State of Kentucky, in Deed Book 154, page 308.
- B. A certain tract of land described in a certain deed dated May 12, 1972, from Big Rivers Rural Electric Cooperative Corporation to Anaconda Aluminum Company, a Montana corporation, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 259, page 177.
- C. A certain tract of land described in a certain deed dated August 10, 1973, from Big Rivers Electric Corporation, to Peabody Coal Company, a Delaware Corporation, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 268, page 633.

**WEBSTER COUNTY**  
**(3.2 ACRES)**

A certain tract of land described in a certain deed, dated October 5, 1963, from Georgia Rideout, unmarried, recorded in the Office of the Clerk of Webster County, in the State of Kentucky in Deed Book 127, page 51, and by Deed of Correction from same grantor to same grantee, dated January 23, 1964, recorded in Deed Book 127, page 387, in the Office of the Clerk of Webster County, Kentucky.

**WEBSTER COUNTY**  
**(3.5 ACRES)**

A certain tract of land described in a certain deed, dated October 5, 1963 from Effie Gibson and husband, W.B. Gibson, Ola Walker,

widow, Mae Walker, widow, Zella Griffin, widow, Georgia Rideout, unmarried, and Walter Rideout, unmarried, recorded in the Office of the Clerk of Webster County, in the State of Kentucky, in Deed Book 127, page 48, and by Deed of Correction, dated January 23, 1964, and recorded in Deed Book 127, page 392, in said office.

**HENDERSON COUNTY**  
**(1.519 ACRES, 2.06 ACRES, AND 0.111 ACRES)**

Three certain tracts of land described in a certain deed, dated February 25, 1972, from Anaconda Aluminum Company, a corporation, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 259, page 174.

**HENDERSON AND WEBSTER COUNTIES, KENTUCKY**  
**(136 ACRES)**

A certain tract of land described in a certain deed dated April 21, 1971 from Zella Griffin, widow, grantor to Big Rivers Rural Electric Cooperative Corporation as grantee, and recorded in the office of the clerk of the Webster County Court, in the State of Kentucky, in Deed Book 151, page 302, and recorded in the office of the clerk of Henderson County, in the State of Kentucky in Deed Book 260, page 23, and conveying 1/5 undivided interest therein.

A certain tract of land described in a certain deed dated November 12, 1972 from W.J. Walker and wife, Elinora Walker, Thornton Walker and wife Lockie Mae Walker, Walker Rideout, unmarried, and Effie Gibson and husband William B. Gibson, as grantors to Big Rivers Rural Electric Cooperative Corporation as grantee and recorded in the office of the clerk of Webster County, in the State of Kentucky in Deed Book 157, page 124, and recorded in the office of the clerk of Henderson County, in the State of Kentucky in Deed Book 268, page 628, and conveying an undivided 4/5ths interest therein.

Subject to right-of-way conveyed to Commonwealth of Kentucky for Pennyrile Parkway, by Rideout.

Also subject to easement dated March 11, 1974 from Big Rivers R.E.C.C., as grantor to Henderson Dorsul, Inc., a Kentucky corporation, as grantee, and recorded in the office of the clerk of

Henderson County, in the State of Kentucky in Deed Book 271, page 98.

**HENDERSON COUNTY - EASEMENT TO RIVER CELLS**

Any and all rights conveyed in Deed of Easement between City of Henderson Utility Commission, City of Henderson, and Big Rivers Electric Corporation, dated July 26, 1974, concerning coal conveying and barging facilities, and recorded in the office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 273, page 358.

**HENDERSON COUNTY**  
**(4.13 ACRES)**

A certain tract of land described in a certain deed, dated September 29, 1965, from T.O. Kyle and wife, Eleanor Kyle, recorded in the Office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 221, page 553.

SUBJECT to easement granted to Texas Gas Transmission Corporation, by instrument dated February 20, 1969 and recorded in the office of the Clerk of Henderson County, in the State of Kentucky, in Deed Book 241, page 75.

**WEBSTER COUNTY**  
**(29.37 ACRES)**

A certain tract of land described in a certain deed, dated April 14, 1975, from Walker Rideout, unmarried, recorded in the Office of Webster County, in the State of Kentucky, conveying an undivided 4/5ths interest in a tract of 29.37 acres, in Deed Book 165, page 89.

And a certain tract of land described in a certain deed, dated April 14, 1975, by Thornton Walker and wife, recorded in the Office of Webster County, in the State of Kentucky, conveying an undivided 1/5th interest in a tract of 29.37 acres, in Deed Book 165, page 92.

**HENDERSON COUNTY**  
**(2.62 ACRES)**

A certain tract of land described in a certain deed, dated February 7, 1975, from Penpark, Inc. a Kentucky corporation, recorded in the Office of Henderson County, in the State of Kentucky, conveying a tract of 2.62 acres, more or less, in Deed Book 276, page 653. Subject to reservation of an easement for ingress and egress to

Penpark additional lands, with right to construct, maintain and operate on said easement adequate roads and streets, water, sewer, gas, electric and telephone utility services, which easement shall be perpetual.

SUBJECT to an unrecorded lease to Daniel S. Dant dated January 18, 1995 for purposes of growing crops, fencing, grazing cattle and hay production.

**WEBSTER COUNTY, KENTUCKY**  
**(78 ACRES) (1.19 ACRES)**

Two certain tracts of land described in a certain Deed, dated July 5, 1975, conveyed by Martha Jacobshagen, widow of Alfred Jacobshagen, Grantor, to Big Rivers Electric Corporation, Grantee, recorded in the Office of the Clerk of the Webster County Court in the State of Kentucky, in Deed Book 165, page 685.

**GREEN PLANT SITE**

**WEBSTER COUNTY**  
**(195.72 ACRES)**

Two certain tracts of land described in a certain deed, dated April 7, 1978, from R.T. Majors and Mona Majors, his wife, recorded in the Office of the Clerk of Webster County, in the State of Kentucky, conveying a tract of 195.72 acres in Deed Book 174, page 182.

The above described property is subject to the following easements and right-of-ways, recorded and unrecorded:

- (a) Pipeline easement of unspecified width dated July 12, 1954, recorded in Deed Book 112, page 195, office aforesaid, from R.T. Majors and Mona Majors, his wife, to Owensboro-Ashland Company.
- (b) Pipeline easement of unspecified width for a 6-inch natural gas pipeline dated July 25, 1973, recorded in Deed Book 159, page 463, office aforesaid, from R.T. Majors and Mona Majors, his wife, to Henderson Dorsul, Inc.
- (c) Electric transmission line easement 100 feet wide dated May 6, 1964, recorded in Deed Book 128, page 60A, office



aforesaid, from R.T. Majors and Mona Majors, his wife, to Big Rivers Rural Electric Cooperative Corporation.

- (d) Rights of the public and private rights of others entitled thereto in and to the use of that portion of the premises within the bounds of the "county road" shown on the aforementioned plat of the subject premises.
- (e) Henderson Union Rural Electric Cooperative Corporation distribution line easement.

**WEBSTER COUNTY**  
**(338.82 Acres)**

A certain tract of land described in a certain deed, dated January 6, 1978, from Morgan M. Blair and his wife, Marilyn Blair, and Rizpah Blair, widow and unmarried, recorded in the Office of the Clerk of Webster County, in the State of Kentucky, and conveying a tract of 338.82 acres in Deed Book 173, page 404. This conveyance is subject to all valid and subsisting oil and gas leases on the above described real property of record against the above described real property, and is to be effective on January 1, 1978, as to any production from the above described real property under any such leases. Further, this conveyance is subject to an easement on the above described real property dated August 4, 1939, from Jane Edwards Chessher to the Board of Drainage Commissioners of Webster County, Kentucky, for the purpose of improving drainage conditions and to construct and maintain the J.C. Thornsberry Drainage Channel, etc. Also, this conveyance is subject to three pipe line easements through the above described real property granted to Texas Gas Transmission Corporation by deeds of record in Deed Book 106, page 587, Miscellaneous Book 71, page 419, and Deed Book 134, page 329, all in the Webster County Court Clerk's Office.

**WEBSTER COUNTY**  
**(90.93 Acres)**  
**(2 tracts: 11.35 acres and 79.58 acres)**

Two certain tracts of land described in a certain deed, dated January 10, 1980, from Marcus Elliott Gibson and his wife, Vella Gibson, recorded in the Office of the Clerk of Webster County, in the State of Kentucky, conveying tracts of 90.93 acres in Deed Book 179, page 571. There is excepted from the foregoing tracts easements conveyed to Big Rivers Rural Electric Cooperative

Corporation dated April 14, 1964, and recorded in Deed Book 128, page 27; August 23, 1971, recorded in Deed Book 152, page 411; March 21, 1973, recorded in Deed Book 158, page 156, and outright conveyances to Commonwealth of Kentucky Department of Highways by deed dated January 23, 1967, and recorded in Deed Book 136, page 462, all recordings being in the Office of the Clerk of Webster County Court.

### **COLEMAN PLANT SITE**

#### **HANCOCK COUNTY** **(212.66 Acres)**

A certain tract of land described in a certain deed dated December 6, 1966, from John Q. Adams and Mary T. Adams, his wife; William D. Adams, and Emma R. Adams, his wife; J.C. Adams and Mary D. Adams, his wife; Eula A. Wiles and Brinton Wiles, her husband; Anna Creason and James M. Creason, Jr., her husband; and Mary Helen A. Jolly and Reuben Jolly, her husband, recorded in the Office of the Clerk of Hancock County, in the State of Kentucky, in Deed Book 71, page 380.

#### **HANCOCK COUNTY** **(64.13 Acres)**

A certain tract of land described in a certain deed, dated January 19, 1979, from W.E. Horrell and Dorothy Elizabeth Horrell, his wife, recorded in the Office of Hancock County, in the State of Kentucky, conveying a tract of 64.13 acres, more or less, in Deed Book 88, page 505. There is reserved from this conveyance and from the description of the above tract a burial ground 45.00 feet square and access for ingress and egress. This burial ground was excepted from the description in the deed from James R. Hamilton, et ux, to John S. Lander dated October 26, 1853, and record in Deed Book 7, page 86, Office of the Hancock County Court Clerk. There is also reserved from this conveyance certain sand and gravel rights which were conveyed in fee to Henry Koch, et al, from Robert C. Beauchamp by Deed dated October 30, 1935, recorded in Deed Book 53, page 186, office aforesaid.

**WILSON PLANT SITE**

**OHIO COUNTY**  
**(506 Acres)**

A certain tract of land described in a certain deed, dated June 18, 1980, from Peabody Coal Company, a Delaware corporation, and Beaver Dam Coal Company, a Delaware corporation, recorded in the Office of the Clerk of Ohio County, in the State of Kentucky, in Deed Book 237, pages 80-89. There is excepted from this description the conveyance from Big Rivers to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet by deed dated April 13, 1984, recorded in Deed Book 250, page 751, Office of the Clerk of Ohio County.

**OHIO COUNTY**  
**(1,754.98 Acres)**

A certain tract of land described in a certain deed, dated June 18, 1980, from Peabody Coal Company, a Delaware corporation, and Beaver Dam Coal Company, a Delaware corporation, recorded in the Office of the Clerk of Ohio County, in the State of Kentucky, in Deed Book 237, pages 90-102. There is excepted from this description the conveyance from Big Rivers to the Commonwealth of Kentucky for the use and benefit of the Transportation Cabinet by deed dated April 13, 1984, recorded in Deed Book 250, page 751, Office of the Clerk of Ohio County.

LESS AND EXCEPTED 220.09 acres conveyed to Peabody Coal Company by deed dated May 13, 1988 of record in Deed Book 265, page 418, Office aforesaid.

**OHIO COUNTY**  
**(HIGHWAY DEPT. QUITCLAIM**  
**POINT PLEASANT FERRY)**

A certain tract of land described in a Quitclaim Deed dated May 12, 1987 from the Commonwealth of Kentucky recorded in Deed Book 261, page 286, Office aforesaid.

**OHIO COUNTY - WILSON STATION RAILROAD SPUR**  
**3.313 Acres**

A certain tract of land described in a certain deed, dated June 2, 1980, from Edward Lewis and Mary Lewis, his wife, recorded in the Office of the Clerk of Ohio County, in the State of Kentucky, in Deed Book 237, pages 1-2.

**OHIO COUNTY - MOUNT PLEASANT**  
**(1/2 Acre)**

A certain tract of land described in a certain deed, dated May 12, 1980, from the Board of Education of Ohio County, Kentucky, a body politic and corporate, of Ohio County, Kentucky, recorded in the Office of the Clerk of Ohio County, in the state of Kentucky, in Deed Book 237, pages 256-257.

**SUBSTATION SITES**

**CRITTENDEN COUNTY - SULLIVAN SWITCHING STATION**  
**(1.99 Acres)**

A certain tract of land described in a certain deed, dated November 16, 1964, from William Marshall Berry, single, Pearl Berry, single, and Edith Berry, single, recorded in the office of the Clerk of the Crittenden County Court, in the State of Kentucky, in Deed Book 98, page 650.

SAVING AND EXCEPTING FROM THE ABOVE TRACT THE FOLLOWING CONVEYANCE BY BIG RIVERS R.E.C.C.

A certain tract of land described in a certain deed, dated May 12, 1972, by Big Rivers Rural Electric Cooperative Corporation, a Kentucky corporation, to Henderson-Union Rural Electric Cooperative Corporation, a Kentucky corporation and recorded in the Office of the Clerk of the County Court of Crittenden County, in the State of Kentucky, in Deed Book 111, page 532.

**UNION COUNTY - MORGANFIELD SWITCHING STATION**  
**(1.94 Acres)**

A certain tract of land described in a certain deed, dated December 17, 1965, from Annie H. Meacham, widow, Charles M. Meacham,

III and wife Wanda I. Meacham; Annie Meacham McElroy and husband, Sam M. McElroy; Eleanor Meacham Thurmond and husband, John M. Thurmond; William T. Meacham and wife, Jane Meacham and Elizabeth Meacham Payne, a single woman, recorded in the Office of the Clerk of Union County Court, in the State of Kentucky, in Deed Book, 181, page 96.

Together with an easement described in a certain deed dated April 3, 1967, from Charles M. Meacham III and wife, Wanda Lee Meacham, recorded in the Office of the Clerk of Union County Court, in the State of Kentucky, in Deed Book 188, page 190.

**HENDERSON COUNTY - LOT ADJOINING HENDERSON UNION  
ELECTRIC COOP'S ZION SUBSTATION  
(93' x 175')**

A certain tract of land described in a certain deed, dated May 13, 1968 from Malcolm N. Pruitt and wife, Catherine A. Pruitt, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 236, page 293.

**HENDERSON COUNTY - CORYDON SUBSTATION  
(200' x 200')**

A certain tract of land described in a certain deed, dated September 1, 1971, from Elmer Blakeman and wife, Mary Blakeman, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 254, page 591.

**HENDERSON COUNTY - HENDERSON COUNTY SUBSTATION  
(7.93 Acres and Easement)**

A certain tract of land described in a certain deed, dated June 11, 1974, from Jesse F. Parrish and wife, Izetta P. Parrish, Larry F. Parrish and wife, Linda B. Parrish, recorded in the Office of the Clerk of the Henderson County Court, in the State of Kentucky, in Deed Book 272, page 516.

**DAVISS COUNTY - UTICA SWITCHING STATION  
(1.79 Acres)**

A certain tract of land described in a certain deed, dated September 4, 1964, from John Moorman, Special Commissioner of Daviess



County Court, who conveys for and on behalf of Lucinda P. Gibson, Ethel C. Gibson, Unknown Heirs and Unknown Defendants and C.S. and W. Investors, recorded in the Office of the Clerk of the Daviess County Court, in the State of Kentucky, in Deed Book 332, page 277.

SUBJECT to an unrecorded lease to Robert E. Worthington dated April 26, 1984 for purposes of grazing cattle and hay production.

ALSO SUBJECT to unrecorded agreements dated July 22, 1994 and July 18, 1994, in favor of Green River Electric Corporation for placement of electrical distribution line facilities.

**DAVIESS COUNTY - DAVIESS COUNTY SUBSTATION**  
**(5.23 and 0.34 Acres)**

A certain tract of land described in a certain deed, dated February 7, 1973, from B.L. Mercer and his wife, Nellie Mercer, recorded in the Office of the Clerk of the Daviess County Court, in the State of Kentucky, in Deed Book 423, page 304.

**DAVIESS COUNTY - NEWMAN SUBSTATION**

A 2.2328 acre tract described in a deed from the County of Daviess and Scott Paper Company dated November 10, 1994, of record in Deed Book 643, page 123, Office of the Daviess County Court Clerk.

**HANCOCK COUNTY - HANCOCK SUBSTATION**  
**(3.5 Acres)**

A certain tract of land described in a certain deed, dated February 16, 1965, from Green River Rural Electric Cooperative Corporation, a Kentucky corporation, recorded in the Office of the Clerk of Hancock County, in the State of Kentucky, in Deed Book 70, page 17; and Deed of Correction recorded in Deed Book 70, page 87.

**HANCOCK COUNTY - MARTIN-MARIETTA STATION (Old Harvey Station)**  
**(.265 Acre)**

A certain tract of land described in a certain deed, dated September 20, 1966, from Green River Rural Electric Cooperative Corporation, a Kentucky corporation, recorded in the Office of the

Clerk of Hancock County, in the State of Kentucky, in Deed Book 71, page 182.

**HANCOCK COUNTY - NATIONAL ALUMINUM CORPORATION SUBSTATION**  
**(1.62 Acre)**

A certain tract of land described in a certain deed, dated March 3, 1970, from National Aluminum Corporation, a Delaware corporation, recorded in the Office of the Clerk of Hancock County, in the State of Kentucky, in Deed Book 81, page 147.

**HANCOCK COUNTY - ADDITION TO NATIONAL ALUMINUM SUBSTATION**

A .09 acre lot described in a deed from Alumax Mill Products, Inc. dated January 24, 1990 of record in Deed Book 102, page 660, Office of the Hancock County Court Clerk.

**BRECKINRIDGE COUNTY - HARDINSBURG SWITCHING STATION**  
**(13.04 Acres)**

A certain tract of land described in a certain deed, dated October 14, 1966, from Harold Beard and Helen Beard, his wife, recorded in the Office of the Clerk of Breckinridge County, in the State of Kentucky, in Deed Book 111, page 471.

**McCRACKEN COUNTY - McCRACKEN COUNTY SWITCHING STATION**  
**(10 Acres)**

A certain tract of land described in a certain deed, dated February 8, 1980, from Garth Tilford and Reba Louise Tilford, his wife, recorded in the Office of the Clerk of McCracken County, in the State of Kentucky, in Deed Book 626, page 271. This conveyance is subject to the following exceptions.

(a) Transmission line easement conveyed to Kentucky Utilities from Louis Bradford, et ux, by instrument dated June 12, 1951, recorded in Deed Book 317, page 376, office aforesaid.

(b) Easement for telephone and telegraph lines conveyed to Southern Bell Telephone & Telegraph Company from Louis Bradford, et ux, by instrument dated January 22, 1951, recorded in Deed Book 293, page 171, Office aforesaid.

(c) Easement for telephone and telegraph lines conveyed to Southern Bell Telephone & Telegraph Company from H. Ewell Russell, et ux, by deed dated January 22, 1951, recorded in Deed Book 293, page 176, office aforesaid.

(d) Transmission line easement conveyed to Kentucky Utilities from H. Ewell Russell, et ux, by instrument dated July 12, 1951, recorded in Deed Book 304, page 7, office aforesaid.

(e) Transmission line easement conveyed to the United States of America from H. Ewell Russell, et ux, by deed dated October 10, 1951, recorded in Deed Book 304, page 526, office aforesaid.

(f) A one-half interest in all the oil and mineral rights acquired by First Parties from Louis Bradford was excepted from the conveyance to Louis Bradford by H. Ewell Russell, et ux, deed dated August 14, 1950, recorded in Deed Book 315, page 40, office aforesaid.

**MEADE COUNTY - MEADE COUNTY SWITCHING STATION**  
**(7.251 Acres)**

A certain tract of land described in a certain deed dated June 2, 1980, from Sherley Simmons, an unmarried person, recorded in the Office of the Clerk of Meade County, in the State of Kentucky, in Deed Book 167, page 56.

**MICROWAVE SITE**

**DAVIESS COUNTY - HABIT MICROWAVE SITE**  
**(3.34 Acres)**

A certain tract of land described in a certain deed, dated September 13, 1967, from Thomas H. Logsdon and Marian Fay Logsdon, his wife, recorded in the Office of the Clerk of Daviess County, in the State of Kentucky, in Deed Book 363, page 640.

**UNION COUNTY - MORGANFIELD MICROWAVE SITE**  
**(.46 Acre)**

A certain tract of land described in a certain deed, dated March 30, 1967, from Annie H. Meacham, widow, Charles H. Meacham, III and wife, Wanda I. Meacham, Annie Meacham McElroy and husband, Sam M. McElroy; Eleanor Meacham Thurmond and

husband, John M. Thurmond; William T. Meacham and wife, Jane Meacham and Elizabeth Meacham Payne, single, recorded in the Office of the Clerk of Union County, in the State of Kentucky, in Deed Book 188, page 192.

**BRECKINRIDGE COUNTY - WEBSTER MICROWAVE TOWER SITE**  
**(2500 Square Feet Plus Access Easement)**

A certain tract of land and access road easement described in a certain deed dated March 27, 1982, from Creston Dutschke and Fannie Lee Dutschke, husband and wife, recorded in the Office of the Clerk of Breckinridge County, in Deed Book 166, page 423.

**CALDWELL COUNTY - CRIDER MICROWAVE SITE**  
**(Approximately 2500 Square Feet)**

A certain tract of land described in a deed dated September 15, 1981, from Johnson Stone and Alice Stone, husband and wife, recorded in the Office of the Clerk of Caldwell County, in Deed Book 153, page 555.

**CRITTENDEN COUNTY - MARION MICROWAVE SITE**  
**(Approximately 2500 Square Feet)**

A certain tract of land described in a deed dated July 21, 1981, from Harvey G. Hunt and Anna Lois Hunt, husband and wife, recorded in the Office of the Clerk of Crittenden County, in Deed Book 137, page 84.

**HANCOCK COUNTY - SKILLMAN SUBSTATION**  
**(5.09 Acres)**

A certain tract of land described in a deed dated March 2, 1983, from Willamette Industries, Inc., and recorded in the Office of the Clerk of Hancock County, in Deed Book 94, page 65.

LESS AND EXCEPTED 0.182 acres conveyed to County of Hancock by deed dated August 28, 1990, of record in Deed Book 103, page 465, Office of the Hancock County Court Clerk.

ALSO LESS AND EXCEPTED 0.003 acres conveyed to Willamette Industries, Inc. by deed dated August 28, 1990, of record in Deed Book 103, page 468, Office aforesaid.

**HANCOCK COUNTY - COLEMAN EHV SUBSTATION**

**(20.0 Acres)**

A certain tract of land described in a deed dated November 18, 1981, from C. Waitman Taylor, Jr., and Margaret Taylor, husband and wife, recorded in the Office of the Clerk of Hancock County, in Deed Book 92, page 548, subject to mineral reservations of record.

**HEADQUARTERS PARKING - THIRD AND WATER STREETS**

**(Four Lots)**

Four certain tracts of land described in deeds dated February 10, 1981, from A.D. Sprague, III, and Barbara Q. Sprague, husband and wife, recorded in the Office of the Clerk of Henderson County, in Deed Book 324, page 418; Deed Book 324, page 419; Deed Book 324, page 420; and Deed Book 324, page 421, Office aforesaid.

Big Rivers Electric Corporation conveyed "New Lot 2" as shown on the plat of record in Plat Book 7, page 799, Office of the Henderson County Court Clerk, to Western Kentucky Energy Corp. by deed dated September 19, 2000 of record in Deed Book 499, page 188, Office aforesaid. Western Kentucky Energy Corp. conveyed "New Lot 2" of the subject property to Big Rivers Electric Corporation by deed dated July 16, 2009, of record in Deed Book \_\_\_\_\_, page \_\_\_\_\_, Office of the Henderson County Court Clerk.

**HOPKINS COUNTY - HOPKINS COUNTY SUBSTATION**

**(11.78 Acres)**

A certain tract of land described in a deed dated November 24, 1980, from Leota F. Rice and First Kentucky Trust Company of Louisville, co-executors of the Estate of Than G. Rice, deceased, and as testamentary trustees under the will of said Than G. Rice, deceased; Leota F. Rice, widow; Caroline Rice Moore, unmarried; Myra Adams and Freeman Adams, husband and wife; and Robert Rice and Joyce Rice, husband and wife, grantors, to the Mortgagor, as grantee, and recorded in the Office of the Clerk of Hopkins County, in Deed Book 413, page 433.

LESS AND EXCEPT 1.612 acres conveyed to Kenergy Corporation by Big Rivers Electric Corporation, by deed dated



June 12, 2002, of record in Deed Book 609, page 220, Office of the Hopkins County Court Clerk.

**LIVINGSTON COUNTY - LIVINGSTON COUNTY SUBSTATION**  
**(9.98 Acres)**

A certain tract of land described in a deed dated October 4, 1980, from Cleveland Walker and Jean Walker, husband and wife, recorded in the Office of the Clerk of Livingston County, in Deed Book 138, page 212, with general warranty as to the surface and one-third of the minerals underlying the surface.

**McCRACKEN COUNTY - 69 KV TRANSMISSION FACILITIES**  
**(Lot)**

A certain tract of land described in a deed dated February 5, 1983, from Buford Potts, unmarried, recorded in the Office of the Clerk of McCracken County, in Deed Book 651, page 785.

**McCRACKEN COUNTY - ST. JOHN MICROWAVE SITE**  
**(Approximately 2500 Square Feet)**

A certain tract of land described in a deed dated March 29, 1982, from Florence Scheer, widow, and Joyce Ann Alexander and Joe T. Alexander, husband and wife, recorded in the Office of the Clerk of McCracken County, in Deed Book 644, page 386.

**McCRACKEN COUNTY - BRYANT ROAD SUBSTATION**  
**(13.510 Acres)**

A certain tract of land described in a deed dated August 1, 1984, from Edgar L. Conner and Karen J. Conner, husband and wife, recorded in the Office of the Clerk of McCracken County, in Deed Book 666, page 704.

**MEADE COUNTY - MEADE SWITCHING STATION**  
**(0.879 Acre)**

A certain tract of land described in a deed dated June 19, 1980, from Meade County Rural Electric Cooperative Corporation, recorded in the Office of the Clerk of Meade County, in Deed Book 168, page 87.

**OHIO COUNTY - HARTFORD MICROWAVE SITE**  
**(Approximately 2500 Square Feet)**

A certain tract of land described in a deed dated July 16, 1981, from Homer G. Roach and Mary Roach, husband and wife, recorded in the Office of the Clerk of Ohio County, in Deed Book 241, page 287.

**OHIO COUNTY - WILSON STATION RAILROAD SPUR**  
**(5.369 Acres)**

A certain tract of land described in a deed dated August 5, 1980, from Carlos Lee Brown and Lou Verna Brown, husband and wife, recorded in the Office of the Clerk of Ohio County, in Deed Book 237, page 434. The coal and other minerals were excepted from this conveyance.

**OHIO COUNTY - WILSON STATION RAILROAD SPUR**  
**(37.553 Acres)**

A certain tract of land described in a deed dated June 18, 1980, from Peabody Coal Company and Beaver Dam Coal Company, recorded in the Office of the Clerk of Ohio County, in Deed Book 237, page 103.

**OHIO COUNTY - WILSON PLANT SITE**  
**(2 Tracts totaling 48.41 Acres)**  
**AND RAILROAD SPUR (4 tracts totaling 16.167 Acres)**

Certain tracts of land described in a commissioner's deed dated September 3, 1982, from Betty White, Master Commissioner of the Ohio Circuit Court, for and on behalf of Rex Igleheart and Margaret Igleheart, husband and wife, Green River Production Credit Association, and the Farmer's Home Administration, recorded in the Office of the Clerk of Ohio County, in Commissioners Deed Book N, page 510.

**OHIO COUNTY - WILSON STATION**  
**(1/8 Acre)**

A certain tract of land described in a deed dated October 31, 1980, from Estle Dutschke, single, recorded in the Office of the Clerk of Ohio County, in Deed Book 238, page 372.

**OHIO COUNTY - WILSON STATION RAILROAD SPUR**  
**(2.53 Acres)**

A certain tract of land described in a commissioner's deed dated October 6, 1981, from Betty White, Master Commissioner of the Ohio Circuit Court, for and on behalf of Marvin Boling and Maude Boling, husband and wife, recorded in the Office of the Clerk of Ohio County, in Commissioners Deed Book N, page 429.

**OHIO COUNTY - WILSON STATION RAILROAD SPUR**  
**(1.969 Acres)**

A certain tract of land described in a deed dated January 26, 1981, from Peabody Coal Company and Beaver Dam Coal Company, recorded in the Office of the Clerk of Ohio County, in Deed Book 239, page 487.

**OHIO COUNTY - WILSON STATION RAILROAD SPUR**  
**(11.934 Acres)**  
**(2 Tracts: 10.668 acres and 1.266 acres)**

Two certain tracts of land described in a deed dated September 17, 1980, from Elizabeth R. Johnson, unmarried, recorded in the Office of the Clerk of Ohio County, in Deed Book 237, page 806.

**WEBSTER COUNTY - GREEN PLANT SITE**  
**(22.43 Acres)**

A certain tract of land described in a deed dated July 16, 1980, from the Commonwealth of Kentucky, by George Atkins, Secretary of the Department of Finance, Commonwealth of Kentucky, recorded in the office of the Clerk of Webster County, in Deed Book 181, page 184.

**WEBSTER COUNTY - GREEN PLANT SITE**  
**(Two Parcels)**

Two certain tracts of land described in a deed dated February 4, 1981, from Danny D. O'Nan and Sue O'Nan, husband and wife, recorded in the Office of the Clerk of Webster County, in Deed Book 182, page 264.

**WEBSTER COUNTY - GREEN PLANT SITE**  
**(2 Acres)**

A certain tract of land described in a deed dated February 4, 1981, from Harold Wayne Burton and Alice C. Burton, husband and wife, recorded in the Office of the Clerk of Webster County, in Deed Book 182, page 267.

**MEADE COUNTY - LOT**

1.3672 acre lot described in the deed from Claude R. Stennett, et ux, dated January 22, 1989 of record in Deed Book 281, page 118, Office of the Meade County Court Clerk.

**0.129 ACRES LOCATED IN BRECKINRIDGE COUNTY**  
**YANCY PROPERTY**

A certain tract of land described in a deed dated November 14, 2007, from William D. Yancey and Kathleen A. Yancey,, his wife, and recorded in Deed Book 328, page 476, Office of the Breckinridge County Court Clerk.

**95.996 ACRES LOCATED IN BRECKINRIDGE COUNTY**  
**NEWBY PROPERTY**

A certain tract of land described in a deed dated January 7, 2008 from Paulette Curry and Thomas C. Brite, as Co-Executors of the Martha Marie Newby (a/k/a Marie Newby) Estate, and recorded in Deed Book 329, page 546, Office of the Breckinridge County Court Clerk.

**5.733 ACRES LOCATED IN MEADE COUNTY**  
**SPINK PROPERTY**

A certain tract of land described in a deed from Donald H. Spink and Mary Jo Spink, his wife, dated September 5, 2007, of record in Deed Book 530, page 608, Office of the Meade County Court Clerk.

**3.870 ACRES LOCATED IN DAVIESS COUNTY**  
**HAYNES TRUST PROPERTY**

A certain tract of land described in a deed dated February 21, 2007, from James I. Haynes, Trustee of the James I. Haynes Trust dated

the 28th day of May, 2002, and recorded in Deed Book 828, page 986, Office of the Daviess County, Kentucky Court Clerk.

**9.537 ACRES LOCATED IN CALDWELL COUNTY**  
**SIGLER PROPERTY**

A certain tract of land described in a deed from Gerald W. Sigler and Sandra K. Sigler, his wife, dated April 17, 2003, of record in Deed Book 239, page 115, Office of the Caldwell County Clerk.

**8.440 ACRES LOCATED IN MARSHALL COUNTY**  
**RUDOLPH/BARRETT PROPERTY**

A certain tract of land described in a deed from Boverda Rudolph, et al, dated April 16, 2009, of record in Deed Book 390, page 48, Office of the Marshall County Court Clerk.

**HANCOCK COUNTY - LCC, LLC PROPERTY**  
**(159.537 acres, 144.69 acres, 145.34 acres and 3.37 acres)**

A certain tract of land described in a deed dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009, from LCC, LLC, a Kentucky limited liability company, record in Deed Book \_\_\_\_\_, page \_\_\_\_\_, Office of the Hancock County Court Clerk.

**INDENTURE  
EXHIBIT**

**EXHIBIT B  
SCHEDULE OF CERTAIN CONTRACTS INCLUDED IN TRUST ESTATE**

1. Wholesale Power Contract made as of October 14, 1977, between the Company and Jackson Purchase Rural Electric Cooperative Corporation, as amended.
2. Wholesale Power Contract made as of June 11, 1962 between the Company and Meade County Rural Electric Cooperative Corporation, as amended.
3. Wholesale Power Contract made as of June 11, 1962 between the Company and Kenergy Corp. (successor by consolidation to Henderson Union Electric Cooperative Corp.), as amended.
4. Wholesale Power Contract made as of June 11, 1962 between the Company and Kenergy Corp. (successor by consolidation to Green River Electric Corporation), as amended.
5. Agreement dated October 12, 1974 by and between the Company and Kenergy Corp. (successor by consolidation to Henderson Union Electric Cooperative Corp.), as amended.
6. Agreement dated October 12, 1974 by and between the Company and Kenergy Corp. (successor by consolidation to Green River Electric Corporation) as amended and restated by an Agreement dated February 16, 1988, as amended.
7. Agreements dated as of July 15, 1998 between the Company and Kenergy Corp. (successor by consolidation to Green River Electric Corporation and Henderson Union Electric Cooperative Corp.).
8. Power Plant Construction and Operation Agreement between the City of Henderson, Kentucky and the Company, dated August 1, 1970, as amended.
9. Power Sales Contract between the City of Henderson, Kentucky and the Company, dated August 1, 1970, as amended.
10. Joint Facilities Agreement between the City of Henderson, Kentucky and the Company, dated August 1, 1970, as amended.
11. Wholesale Electric Service Agreement (Alcan) dated July 16, 2009 by and between the Company and Kenergy Corp.



12. Wholesale Electric Service Agreement (Century) dated as of July 16, 2009 by and between the Company and Kenergy Corp.
13. Coordination Agreement dated as of July 16, 2009 by and between the Company and Alcan Primary Products Corporation.
14. Coordination Agreement dated July 16, 2009 by and between the Company and Century Aluminum of Kentucky General Partnership.
15. Security and Lockbox Agreement (Alcan) dated as of July 16, 2009 by and among Old National Bank, the Company, Kenergy Corp., and Alcan Primary Products Corporation.
16. Security and Lockbox Agreement (Century) dated as of July 16, 2009 by and among Old National Bank, the Company, Kenergy Corp., and Century Aluminum of Kentucky General Partnership.
17. Parent Guarantee dated as of July 16, 2009 by Alcan Corporation in favor of Kenergy Corp., and the Company.
18. Parent Guarantee dated as of July 16, 2009 by Century Aluminum Company in favor of Kenergy Corp., and the Company.
19. Transaction Termination Agreement dated as of March 26, 2007, by and among the Company, LG&E Energy Marketing Inc., and Western Kentucky Energy Corp.
20. Indemnification Agreement dated as of July 16, 2009 by and between the Company and Western Kentucky Energy Corp.

**INDENTURE  
EXHIBIT**

**EXHIBIT C  
SCHEDULE OF EXISTING OBLIGATIONS**

**Series 1983 Revenue Bond Obligations**

- (1) Ambac Municipal Bond Insurance Policy Series 1983 Note, dated July 16, 2009, made by the Company to Ambac Assurance Corporation, ("Ambac") reflecting the Company's obligation to pay Ambac for any payments of principal and interest in respect of the \$58,000,000 County of Ohio, Kentucky Pollution Control Float Rate Demand Bonds, Series 1983.

Address: Ambac Assurance Corporation  
One State Street Plaza  
New York, New York 10004

County and  
State of Residence: New York County, New York

- (2) Big Rivers Electric Corporation Standby Bond Purchase Agreement Note (Series 1983 Bonds), dated July 16, 2009, made by the Company to Dexia Credit Local, in an amount equal to the principal and interest due on any of the \$58,000,000 County of Ohio, Kentucky Pollution Control Floating Rate Demand Bond, Series 1983 purchased by Dexia pursuant to the Standby bond Purchase Agreement identified in such Note.

Address: Dexia Crédit Local New York Branch  
445 Park Avenue, 7th floor  
New York, New York 10022

County and  
State of Residence: New York County, New York

**Series 2001A Revenue Bond Obligations**

Big Rivers Electric Corporation FCB Series 2001A Note, dated July 16, 2009, made by the Company to the County of Ohio, Kentucky and endorsed to U.S. Bank Trust National Association, as trustee, in the maximum principal amount of \$83,000,000.

Address: U.S. Bank National Association  
60 Livingston Avenue  
EP-MN-WS3C  
St. Paul, MN 55107-2292

County and

State of Residence: Ramsey County, Minnesota

**RUS Obligations**

- (i) RUS 2009 Promissory Note Series A, dated July 16, 2009, made by the Company to the United States of America, in the principal amount of **\$602,573,536**, maturing on July 1, 2021.
- (ii) RUS 2009 Promissory Note Series B, dated July 16, 2009, made by the Company to the United States of America, in the amount at final maturity of \$245,530,257.30, maturing on December 31, 2023.

YEAR	MONTH	ACCELERATION PERCENTAGE		YEAR	MONTH	ACCELERATION PERCENTAGE
2009	July	37.96%		2015	April	55.75%
2009	October	38.59%		2015	July	56.69%
2010	January	39.25%		2015	October	57.62%
2010	April	39.92%		2016	January	58.61%
2010	July	40.59%		2016	April	59.61%
2010	October	41.25%		2016	July	60.60%
2011	January	41.97%		2016	October	61.60%
2011	April	42.68%		2017	January	62.66%
2011	July	43.39%		2017	April	63.73%
2011	October	44.10%		2017	July	64.79%
2012	January	44.87%		2017	October	65.85%
2012	April	45.63%		2018	January	66.99%
2012	July	46.39%		2018	April	68.13%
2012	October	47.15%		2018	July	69.27%
2013	January	47.97%		2018	October	70.40%
2013	April	48.78%		2019	January	71.62%
2013	July	49.59%		2019	April	72.84%
2013	October	50.41%		2019	July	74.05%
2014	January	51.28%		2019	October	75.27%
2014	April	52.15%		2020	January	76.57%
2014	July	53.02%		2020	April	77.87%
2014	October	53.89%		2020	July	79.17%

Address: Rural Utilities Service  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Room 4051  
Washington, D.C. 20250-1500

County and  
State of Residence: Washington, D.C.

YEAR	MONTH	ACCELERATION PERCENTAGE
2017	July	64.79%
2017	October	65.85%
2018	January	66.99%
2018	April	68.13%
2018	July	69.27%
2018	October	70.40%
2019	January	71.62%
2019	April	72.84%
2019	July	74.05%
2019	October	75.27%
2020	January	76.57%
2020	April	77.87%
2020	July	79.17%
2020	October	80.47%
2021	January	81.86%
2021	April	83.25%
2021	July	84.64%
2021	October	86.03%
2022	January	87.52%
2022	April	89.00%
2022	July	90.49%
2022	October	91.98%
2023	January	93.56%
2023	April	95.15%
2023	July	96.74%
2023	October	98.33%
2024	January	100.00%

Address: Rural Utilities Service  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Room 4051  
Washington, D.C. 20250-1500

County and  
State of Residence: Washington, D.C.



OHS East:160243582.18

C-3

STATE OF KENTUCKY  
COUNTY OF CRITTENDEN SCT  
I, Carolyn D. Byford, Clerk of the County Court for the County  
and State aforesaid, certify that the foregoing  
Indenture was on this  
16 day of July 2009 at 8:40A M  
lodged and this certificate duly recorded in my said  
office. Carolyn D. Byford, Clerk  
BY Lucinda Green D.C.  
Fee 551.00 Tax ---  
mtg Book 114 Page 457

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**FIRST SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of June 1, 2010

Relating to the Big Rivers Electric Corporation  
First Mortgage Note, Series 2010A  
Authorized by this First Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**FIRST MORTGAGE OBLIGATIONS**

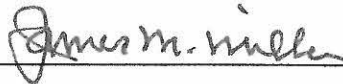
- 
- THIS INSTRUMENT IS A MORTGAGE.
  - THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.
  - BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.
  - THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, AFTER-ACQUIRED PROPERTY, FIXTURES AND PROCEEDS.
  - 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 2 THROUGH 4.
  - THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_



**THIS FIRST SUPPLEMENTAL INDENTURE**, dated as of June 1, 2010 (this "First Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, the Company is the owner of the D.B. Wilson Plant Unit No. 1, a coal-fired steam electric generating plant (the "Plant") located within the geographical limits of the County of Ohio, Kentucky (the "County"), and pursuant to a resolution adopted by the Fiscal Court of the County on September 9, 1980 and the provisions of the Industrial Building Revenue Bond Act (Sections 103.200 through 103.285, inclusive) of the Kentucky Revised Statutes, as amended (the "Act"), the County agreed to finance the air and water pollution and sewage and solid waste facilities located at the Plant (the "Facilities") as an authorized project under the Act, by issuing its "Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project)" (the "Series 2010A Bonds") pursuant to a Trust Indenture, dated as of June 1, 2010, between the County and U.S. Bank National Association, as trustee (the "2010 Indenture") and loaning the proceeds thereof to the Company pursuant to the Loan Agreement, dated as of June 1, 2010, between the County and the Company (the "2010 Financing Agreement"); and

**WHEREAS**, in order to evidence its obligation to repay the loan of the proceeds of the Series 2010A Bonds, the Company will issue to the County its note (the "First Mortgage Note, Series 2010A"), which First Mortgage Note, Series 2010A will be secured under the Indenture; and

**WHEREAS**, the Company desires to execute and deliver this First Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Note, Series 2010A as an Additional Obligation and specifying the form and provisions of the First Mortgage Note, Series 2010A;

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental



Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Note, Series 2010A, to make the First Mortgage Note, Series 2010A issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Note, Series 2010A, in accordance with its terms, have been done and taken; and the execution and delivery of this First Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Note, Series 2010A, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Note, Series 2010A is secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture 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 of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the 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 in the Original Indenture not to be deemed part of the Trust Estate) being part of 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 of the Original Indenture 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 under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Note, Series 2010A is to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, 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**

### **THE FIRST MORTGAGE NOTE, SERIES 2010A AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this First Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Note, Series 2010A.**

There shall be established an Additional Obligation in the form of the promissory note known as and entitled the "First Mortgage Note, Series 2010A" (hereinafter referred to as the "First Mortgage Note, Series 2010A"), the form, terms and conditions of which shall be substantially as set forth in this Section and Section 1.03. The First Mortgage Note, Series 2010A is the same Note described and defined in the 2010 Indenture and the 2010 Financing Agreement as the "Note." The aggregate principal face amount of the First Mortgage Note, Series 2010A which shall be authenticated and delivered and Outstanding at any one time is limited to \$83,300,000.

The First Mortgage Note, Series 2010A shall be dated the date of its authentication and shall mature on July 15, 2031. The First Mortgage Note, Series 2010A shall bear interest computed in the same manner and payable at the same time as the interest on the Series 2010A Bonds is computed and paid as described and computed in accordance with the terms of the 2010 Indenture. The First Mortgage Note, Series 2010A shall be subject to optional prepayment as more particularly set forth in such First Mortgage Note, Series 2010A. The First Mortgage Note, Series 2010A shall be authenticated and delivered to, and made payable to, U.S. Bank National Association, as trustee for the Series 2010A Bonds (in such capacity, the "Bond Trustee"), as assignee and pledgee of the County pursuant to the 2010 Indenture.

All payments made on the First Mortgage Note, Series 2010A shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota in lawful money of the United States of America which will be immediately available on the date payment is due.

**SECTION 1.03. Form of the First Mortgage Note, Series 2010A.**

The First Mortgage Note, Series 2010A and the Trustee's authentication certificate to be executed on the First Mortgage Note, Series 2010A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

**SECTION 1.04. Payments on First Mortgage Note, Series 2010A.**

Payments by the Company on the First Mortgage Note, Series 2010A shall be used to make payments required under the 2010 Financing Agreement.

**ARTICLE II**

**MISCELLANEOUS**

**SECTION 2.01. Supplemental Indenture.**

This First Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. Except to the extent inconsistent with the express terms of this First Supplemental Indenture, the 2010 Indenture, the 2010 Financing Agreement and the Series 2010A Bonds, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Note, Series 2010A to the same extent as if specifically set forth herein.

**SECTION 2.02. Recitals.**

All recitals in this First Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full.

**SECTION 2.03. Successors and Assigns.**

Whenever in this First Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this First Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid,

bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

**SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this First Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this First Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this First Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This First Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this First Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
225 Asylum Street  
Hartford, Connecticut 06103

Additionally, this First Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]







Trustee:

**U.S. BANK NATIONAL ASSOCIATION, as**  
Trustee

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

Name: Philip G. Kane, Jr.

Title: Vice President

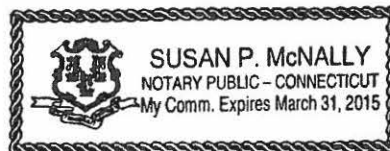
STATE OF CONNECTICUT     )  
  )  
COUNTY OF HARTFORD     )

THE FOREGOING instrument was acknowledged before me this 28 day of May, 2010, by Philip G. Kane, Jr., Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

\_\_\_\_\_  
*Susan P McNally*

(Notarial Seal)



## EXHIBIT A

### RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

## **EXHIBIT B**

THIS FIRST MORTGAGE NOTE, SERIES 2010A IS NONTRANSFERABLE EXCEPT AS MAY BE REQUIRED TO EFFECT ANY TRANSFER TO ANY SUCCESSOR TRUSTEE UNDER THE TRUST INDENTURE, DATED AS OF JUNE 1, 2010, BETWEEN THE COUNTY OF OHIO, KENTUCKY AND U.S. BANK NATIONAL ASSOCIATION, AS BOND TRUSTEE.

No. R-

\$83,300,000

### **BIG RIVERS ELECTRIC CORPORATION FIRST MORTGAGE NOTE, SERIES 2010A**

**BIG RIVERS ELECTRIC CORPORATION** ("Big Rivers"), a cooperative corporation organized under the laws of the Commonwealth of Kentucky, for value received, promises to pay to U.S. Bank National Association, as trustee (the "Bond Trustee"), or its successors in trust, the principal sum of \$83,300,000 and interest thereon as follows: Big Rivers shall pay, during the term of the Loan Agreement, dated as of June 1, 2010 (the "Financing Agreement"), between the County of Ohio, Kentucky (the "County") and Big Rivers, for deposit into the Bond Fund, (i) on or prior to each date on which interest is due on the County's Pollution Control Refunding Revenue Bonds, Series 2010A (Big Rivers Electric Corporation Project), (the "Series 2010A Bonds") issued by the County under the Trust Indenture, dated as of June 1, 2010 (the "Bond Indenture"), between the County and the Bond Trustee, as the same may be amended and supplemented from time to time, the amount of interest due on the Series 2010A Bonds on such date, computed in the manner described in the Bond Indenture, (ii) on the stated maturity date of the Series 2010A Bonds (or earlier date to which the maturity of the Series 2010A Bonds has been accelerated as a result of an event of default), a sum which will equal the principal amount of the Series 2010A Bonds which will become due on such date and (iii) on or prior to any redemption date for the Series 2010A Bonds, an amount equal to the principal of (premium, if any) and interest on the Series 2010A Bonds which are to be redeemed on such date.

This First Mortgage Note, Series 2010A is issued under, is described in and is subject to the Financing Agreement, and is secured by an Indenture, dated as of July 1, 2009 (the "Big Rivers Indenture"), between Big Rivers and U.S. Bank National Association, as trustee (the "Indenture Trustee"), as supplemented and amended.

All payments required pursuant hereto shall be made to the Bond Trustee at its principal office in St. Paul, Minnesota, in lawful money of the United States of America. As set forth in Section 5.7 of the Financing Agreement, the obligation of Big Rivers to make the payments required hereunder shall be absolute and unconditional.

This First Mortgage Note, Series 2010A may be prepaid upon the terms and conditions set forth in Article X of the Financing Agreement.

Big Rivers shall be entitled to credits against payments required hereby as provided in Section 5.2 of the Financing Agreement.

If the maturity date of the Series 2010A Bond shall be accelerated as a result of an event of default, the principal of this First Mortgage Note, Series 2010A shall become due and payable in the manner and with the effect provided in the Financing Agreement. The Financing Agreement provides that, under certain conditions, such acceleration shall be rescinded.

No recourse shall be had for the payments required hereby or for any claim based herein or on the Financing Agreement or on the Big Rivers Indenture against any officer, director or stockholder, past, present or, future, of Big Rivers as such, either directly or through Big Rivers, or under any constitution and provision, statute or rule of law or by the enforcement of any assessment or by any legal or equitable proceedings or otherwise.

This First Mortgage Note, Series 2010A shall not be entitled to any benefit under the Big Rivers Indenture and shall not become valid or obligatory for any purpose until the Indenture Trustee shall have signed the form of authentication certificate endorsed hereon.

All terms use in this First Mortgage Note, Series 2010A which are not defined herein shall have the meanings assigned to them in the Financing Agreement or the Bond Indenture.

IN WITNESS WHEREOF, Big Rivers has caused this First Mortgage Note, Series 2010A to be duly executed, attested and delivered the 8th day of June, 2010.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

---

Mark A. Bailey  
President and Chief Executive Officer

Attest:

---

C. William Blackburn  
Senior Vice President of Financial  
& Energy Services and Chief Financial Officer

This is one of the Obligations of the series designated therein referred to in within-mentioned Big Rivers Indenture.

U.S. BANK NATIONAL ASSOCIATION, as  
Indenture Trustee

By: \_\_\_\_\_  
Philip G. Kane, Jr.  
Vice Presedent

Date of Authentication: June 8, 2010



---

**SECOND SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of July 15, 2012

Relating to the Big Rivers Electric Corporation  
First Mortgage Notes, Series 2012A  
Authorized by this Second Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

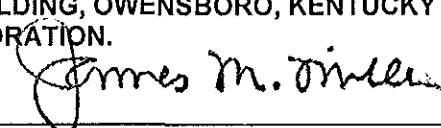
**FIRST MORTGAGE OBLIGATIONS**

---

- 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 2 THROUGH 3.
- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_



**THIS SECOND SUPPLEMENTAL INDENTURE**, dated as of July 15, 2012 (this "Second Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, in connection herewith, the Company will enter into a Secured Credit Agreement, dated as of July 24, 2012 (the "Credit Agreement"), with the several financial institutions or entities from time to time parties thereto (the "Lenders") and CoBank, ACB, a federally chartered instrumentality of the United States, as administrative agent (the "Administrative Agent"), pursuant to which the Lenders have agreed to loan the Company \$235,000,000 and, in connection therewith, the Company will secure certain of its obligations under the Credit Agreement under this Second Supplemental Indenture; and

**WHEREAS**, the Company desires to execute and deliver this Second Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Notes, Series 2012A, in the principal amount of \$235,000,000 (the "First Mortgage Notes, Series 2012A") as an Additional Obligation and specifying the form and provisions of the First Mortgage Notes, Series 2012A; and

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Notes, Series 2012A, to make the First Mortgage Notes, Series 2012A issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Notes, Series 2012A, in accordance with its terms,

have been done and taken; and the execution and delivery of this Second Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Notes, Series 2012A, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Notes, Series 2012A are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture 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 of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the 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 in the Original Indenture not to be deemed part of the Trust Estate) being part of 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 of the Original Indenture 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 under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Notes, Series 2012A are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, 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**

### **THE FIRST MORTGAGE NOTES, SERIES 2012A AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this Second Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Notes, Series 2012A.**

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Notes, Series 2012A" (hereinafter referred to as the "First Mortgage Notes, Series 2012A"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.06 hereof. The First Mortgage Notes, Series 2012A are the same Notes described and defined in the Credit Agreement as the "Notes." The aggregate principal face amount of the First Mortgage Notes, Series 2012A which shall be authenticated and delivered and Outstanding at any one time is limited to \$235,000,000. The First Mortgage Notes, Series 2012A shall be dated July 27, 2012 and are due June 30, 2032.

The First Mortgage Notes, Series 2012A shall bear interest at the rates and be payable on the Interest Payment Dates (as defined in the Credit Agreement) set forth in Section 2.08 of the Credit Agreement. The principal of and interest on, the First Mortgage Notes, Series 2012A 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 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such Interest Payment Date (as defined in the Credit Agreement). Interest on the First Mortgage Notes, Series 2012A shall be computed for the actual number of days the loan is outstanding on a basis of a year consisting of 360 days pursuant to Section 2.09 of the Credit Agreement. The Company will act as the Paying Agent for the First Mortgage Notes, Series 2012A.

#### **SECTION 1.03. Repayment.**

(a) Repayment of the First Mortgage Notes, Series 2012A shall be in such amounts and on such dates as set forth in Exhibit C of the Credit Agreement pursuant to Section 2.04(a) of the Credit Agreement.

(b) The First Mortgage Notes, Series 2012A that the Company acquires and surrenders (other than by means of repayments as provided herein) will be credited

against future repayments for such First Mortgage Notes, Series 2012A and the principal payment to be made on the maturity date of such First Mortgage Notes, Series 2012A, in proportion to the respective amounts of those repayments, subject to authorized denominations.

#### **SECTION 1.04. Voluntary Prepayment.**

The Company may at any time and from time to time prepay the First Mortgage Notes, Series 2012A, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent (as defined in the Credit Agreement) no later than 11:00 AM, Denver, Colorado time five (5) Banking Days (as defined in the Credit Agreement) prior thereto, pursuant to Section 2.05 of the Credit Agreement and for the amount, together with a prepayment surcharge as provided in Section 2.07 of the Credit Agreement.

#### **SECTION 1.05. Mandatory Prepayment.**

The Company shall prepay the First Mortgage Notes, Series 2012A, in full immediately upon the occurrence of a Change of Control (as defined in the Credit Agreement), without the need for any demand or notification by any Person (as defined in the Credit Agreement) pursuant to Section 2.06 of the Credit Agreement and for the amount, together with a prepayment surcharge as provided in Section 2.07 of the Credit Agreement.

#### **SECTION 1.06. Form of the First Mortgage Notes, Series 2012A.**

The First Mortgage Notes, Series 2012A and the Trustee's authentication certificate to be executed on the First Mortgage Notes, Series 2012A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

#### **SECTION 1.07. Registration and Transfer of the First Mortgage Notes, Series 2012A.**

The First Mortgage Notes, Series 2012A shall be issued as fully registered notes without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The First Mortgage Notes, Series 2012A shall be registered in the name of CoBank, ACB in certificated form. Transfers of the First Mortgage Notes, Series 2012A must occur under the terms of the Credit Agreement and the Indenture. To affect a transfer under the Indenture, Holders must fill in and execute the Transfer Notice attached to the First Mortgage Notes, Series 2012A (the "Transfer Notice") and submit the First Mortgage Notes, Series 2012A and the Transfer Notice to the Administrative Agent. Upon countersignature by the Administrative Agent of the Transfer Notice the Administrative Agent shall surrender such First Mortgage Notes, Series 2012A, together with the completed Transfer Notice, to the Trustee for registration of transfer pursuant to the provisions of the Indenture.



## **ARTICLE II**

### **MISCELLANEOUS**

#### **SECTION 2.01. Supplemental Indenture.**

This Second Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. Except to the extent inconsistent with the express terms of this Second Supplemental Indenture and the Credit Agreement, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2012A to the same extent as if specifically set forth herein.

#### **SECTION 2.02. Recitals.**

All recitals in this Second Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Second Supplemental Indenture or the First Mortgage Notes, Series 2012A (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2012A; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Credit Agreement, and it will not be responsible for or charged with knowledge of any terms of the Credit Agreement.

#### **SECTION 2.03. Successors and Assigns.**

Whenever in this Second Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Second Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

#### **SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Second Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Second Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Second Supplemental Indenture contained by or on behalf of the Company shall be for the sole

and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This Second Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Second Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Second Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company and Trustee are authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created; *provided* that the Trustee has no obligation to prepare or make any such filings.

[Signatures on Next Page.]



Trustee:

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: 

Name: Philip G. Kane, Jr.

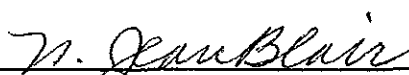
Title: Vice President

STATE OF CONNECTICUT )

COUNTY OF HARTFORD )

THE FOREGOING instrument was acknowledged before me this 20<sup>th</sup> day of June, 2012, by Philip G. Kane, Jr., a Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

  
Notary Public's Signature  
Notary Public, State of Connecticut  
County of Hartford  
My commission expires: \_\_\_\_\_

My Commission Exp. May 31, 2013

(Notarial Seal)

## **EXHIBIT A**

### **RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009**

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

## EXHIBIT B

THIS SERIES 2012A FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

### BIG RIVERS ELECTRIC CORPORATION

### FIRST MORTGAGE NOTES, SERIES 2012A

\$[\_\_\_\_\_] \_\_\_\_\_, 2012

FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the "Borrower") **HEREBY PROMISES TO PAY** to CoBank, ACB (the "Lender"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [\_\_\_\_\_] DOLLARS (\$[\_\_\_\_\_] ), or, if less, the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding on the Commitment Termination Date (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.08 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note all payments of principal and interest in respect of the Loan, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Secured Credit Agreement, dated as of July 24, 2012, by and between the Borrower, the several financial institutions or entities from time to time parties thereto, including the Lender, and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner, as amended, supplemented or modified from time to time (the "Credit Agreement"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of principal upon the occurrence of an Event of Default and for prepayments on the terms and conditions specified therein, including payment of a surcharge pursuant to Section 2.07 of the Credit Agreement.



This Note is an Obligation (as defined in the Indenture) subject to and is secured by that certain Indenture, dated as of July 1, 2009, as supplemented, by and between the Borrower and U.S. Bank National Association, as Trustee.

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer duly executed, by the registered Holder hereof (or such Holder's attorney duly authorized in writing) and countersigned by the Administrative Agent, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

**BIG RIVERS ELECTRIC  
CORPORATION**

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

This is one of the Obligations (as defined in the Indenture) of the series designated therein referred to in the Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

**SCHEDULE TO NOTE  
LOANS**

<b>Date Loan Made or Paid</b>	<b>Amount of Loan Made or Paid</b>	<b>Unpaid Principal Balance of Note</b>	<b>Name of Person Making Notation</b>

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

\_\_\_\_\_  
(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_  
the within Note and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_  
attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

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

\_\_\_\_\_  
(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to S.E.C. Rule 17Ad-15.

The Administrative Agent hereby authorizes the Trustee as Obligation Registrar (as defined in the Indenture) for the First Mortgage Notes, Series 2012A to transfer this Note under the Indenture pursuant to the instructions, above.

CoBank, ACB, as Administrative Agent

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

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

Title: \_\_\_\_\_

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THIRD SUPPLEMENTAL INDENTURE  
(to that certain Indenture dated as of July 1, 2009)  
dated as of July 15, 2012

Relating to the Big Rivers Electric Corporation  
First Mortgage Notes, Series 2012B  
Authorized by this Third Supplemental Indenture

BIG RIVERS ELECTRIC CORPORATION

to

U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE

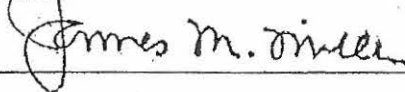
FIRST MORTGAGE OBLIGATIONS

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- THIS INSTRUMENT IS A MORTGAGE.
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- BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.
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- FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED BY THIS INSTRUMENT.
- THE MAXIMUM ADDITIONAL INDEBTEDNESS WHICH MAY BE SECURED HEREUNDER IS \$3,000,000,000.
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- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_



Compliance Filing of Big Rivers  
Electric Corporation

OHSUSA:161020651.7

August 6, 2012 - P.S.C. Case No. 2012-00119



**THIS THIRD SUPPLEMENTAL INDENTURE**, dated as of July 15, 2012 (this "Third Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which is filed of record as shown on Exhibit A hereto;

**WHEREAS**, in connection herewith, the Company will enter into a Loan Agreement, dated as of July 27, 2012 (the "Loan Agreement"), with National Rural Utilities Cooperative Finance Corporation ("CFC"), pursuant to which CFC has agreed to loan the Company \$345,155,800 and, in connection therewith, the Company will secure certain of its obligations under the Loan Agreement under this Third Supplemental Indenture; and

**WHEREAS**, the Company desires to execute and deliver this Third Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Notes, Series 2012B, in the principal amount of \$302,000,000 (the "First Mortgage Notes, Series 2012B") as an Additional Obligation and specifying the form and provisions of the First Mortgage Notes, Series 2012B; and

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Notes, Series 2012B, to make the First Mortgage Notes, Series 2012B issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Notes, Series 2012B, in accordance with its terms, have been done and taken; and the execution and delivery of this Third Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS THIRD SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Notes, Series 2012B, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Notes, Series 2012B are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture 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 of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the 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 in the Original Indenture not to be deemed part of the Trust Estate) being part of 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 of the Original Indenture 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 under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Notes, Series 2012B are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, 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

### THE FIRST MORTGAGE NOTES, SERIES 2012B AND CERTAIN PROVISIONS RELATING THERETO

#### SECTION 1.01. Definitions.

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this Third Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### SECTION 1.02. Authorization and Terms of the First Mortgage Notes, Series 2012B.

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Notes, Series 2012B" (hereinafter referred to as the "First Mortgage Notes, Series 2012B"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.05 hereof. The First Mortgage Notes, Series 2012B are the same Notes described and defined in the Loan Agreement as the "Refinance Note." The aggregate principal face amount of the First Mortgage Notes, Series 2012B which shall be authenticated and delivered and Outstanding at any one time is limited to \$302,000,000.

The First Mortgage Notes, Series 2012B shall be dated July 27, 2012 and shall mature on July 27, 2032. The First Mortgage Notes, Series 2012B shall bear interest and interest shall be payable as provided in Section 3.02 of the Loan Agreement. Interest shall accrue at a rate calculated pursuant to Section 3.02C and Section 3.03 of the Loan Agreement. The First Mortgage Notes, Series 2012B shall amortize as set forth in Section 3.02A of the Loan Agreement. Payments of principal of and interest on the First Mortgage Notes, Series 2012B shall be made on the last day of each of February, May, August and November, provided that if such last day is not a Business Day, the first Business Day thereafter. For purposes of such payments, the term Business Day is defined in the Loan Agreement as any day that both CFC and the depository institution CFC utilizes for funds transfers hereunder are open for business. In addition, upon the occurrence of an Event of Default (as defined in the Loan Agreement) under the Loan Agreement, an Interest Rate Adder (as defined in the Loan Agreement) of two hundred (200) basis points shall be imposed in the manner set forth in Section 7.02 of the Loan Agreement. The principal of, and the fees and interest on, the First Mortgage Notes, Series 2012B 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 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such Payment Date (as defined in the Loan Agreement). Interest on the First Mortgage Notes, Series 2012B shall be computed for the actual number of days the loan is outstanding on a basis determined pursuant to Section 3.02C and Section 3.03 of the Loan Agreement.



The Company will act as the Paying Agent for the First Mortgage Notes, Series 2012B.

The First Mortgage Notes, Series 2012B shall be issued as fully registered notes without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The First Mortgage Notes, Series 2012B shall be registered in the name of CFC at 20701 Cooperative Way, Dulles, Virginia 20166 in certificated form.

#### **SECTION 1.03. Mandatory Principal Repayment**

(a) The First Mortgage Notes, Series 2012B shall be subject to mandatory prepayment pursuant to Section 3B.01 of the Loan Agreement.

(b) The First Mortgage Notes, Series 2012B that the Company acquires and surrenders (other than by means of mandatory prepayments as provided herein) will be credited against future mandatory prepayments for such First Mortgage Notes, Series 2012B and the principal payment to be made on the maturity date of such First Mortgage Notes, Series 2012B, in proportion to the respective amounts of those mandatory prepayments, subject to authorized denominations.

#### **SECTION 1.04. Optional Prepayment**

The Company may at any time, on not less than fifteen (15) days prior written notice to CFC, prepay the First Mortgage Notes, Series 2012B, in whole or in part, on or prior to their stated maturity only to the extent permitted by Section 3.04 of the Loan Agreement and for the amount, together with a prepayment premium, as provided in Section 3.04 of the Loan Agreement.

#### **SECTION 1.05. Form of the First Mortgage Notes, Series 2012B.**

The First Mortgage Notes, Series 2012B and the Trustee's authentication certificate to be executed on the First Mortgage Notes, Series 2012B shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

### **ARTICLE II**

#### **MISCELLANEOUS**

#### **SECTION 2.01. Supplemental Indenture.**

This Third Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. Except to the extent inconsistent with the express terms of this Third Supplemental Indenture and the Loan Agreement, all of the provisions, terms, covenants and conditions of the Original

Indenture shall be applicable to the First Mortgage Notes, Series 2012B to the same extent as if specifically set forth herein.

**SECTION 2.02. Recitals.**

All recitals in this Third Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Third Supplemental Indenture or the First Mortgage Notes, Series 2012B (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2012B; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Loan Agreement, and it will not be responsible for or charged with knowledge of any terms of the Loan Agreement.

**SECTION 2.03. Successors and Assigns.**

Whenever in this Third Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Third Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

**SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Third Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Third Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Third Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This Third Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.



**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Third Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Third Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created; *provided* that the Trustee has no obligation to prepare or make any such filings.

[Signatures on Next Page.]

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

Company:

# BIG RIVERS ELECTRIC CORPORATION

By:

Name: Mark A. Bailey

Title: President and Chief  
Executive Officer

(SEAL)

Attest:

Attest: Paula Mitchell

Name: Paula Mitchell

Title: Executive Secretary

COMMONWEALTH OF KENTUCKY )  
 ) ss  
COUNTY OF HENDERSON )

THE FOREGOING instrument was acknowledged before me this 19<sup>th</sup> day of June, 2012, by Mark A. Bailey, President and Chief Executive Officer of Big Rivers Electric Corporation, a Kentucky corporation, for and on behalf of said corporation.

WITNESS my hand and official seal.

Joy P. Wright

Notary Public's Signature

Notary Public – Kentucky, State at Large

My commission expires: 7-3-14

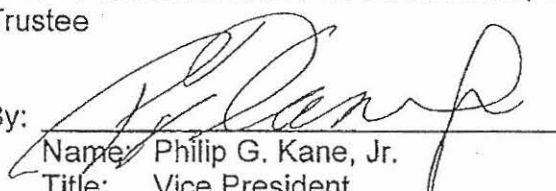
(Notarial Seal)

[Signatures continue on following page]

Trustee:

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By:

  
Name: Philip G. Kane, Jr.  
Title: Vice President

STATE OF CONNECTICUT )

COUNTY OF HARTFORD )

THE FOREGOING instrument was acknowledged before me this 20<sup>th</sup> day of June, 2012, by Philip G. Kane, Jr., a Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

M. Jean Blair  
Notary Public's Signature  
Notary Public, State of Connecticut  
County of Hartford  
My commission expires: \_\_\_\_\_

*My Commission Expires Dec. 31, 2015*

(Notarial Seal)

## EXHIBIT A

### RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

EXHIBIT B

THIS SERIES 2012B FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

CFC Loan No. [ ]

\$302,000,000

BIG RIVERS ELECTRIC CORPORATION

FIRST MORTGAGE NOTES, SERIES 2012B

ISSUANCE DATE: [ ], 2012

BIG RIVERS ELECTRIC CORPORATION, a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky (the "Borrower"), for value received, hereby promises to pay, without setoff, deduction, recoupment or counterclaim, to the order of NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (the "Payee"), at its office in Dulles, Virginia or such other location as the Payee may designate to the Borrower, in lawful money of the United States, the principal sum of THREE HUNDRED TWO MILLION AND 00/100 DOLLARS (\$302,000,000.00), or such lesser sum of the aggregate unpaid principal amount of all advances made by the Payee pursuant to that certain Loan Agreement dated as of even date herewith between the Borrower and the Payee, as it may be amended from time to time (herein called the "Loan Agreement"), and to pay interest on all amounts remaining unpaid hereunder from the date of each advance in like money, at said office, at the rate and in amounts and payable on the dates provided in the Loan Agreement together with any other amount payable under the Loan Agreement. If not sooner paid, any balance of the principal amount and interest accrued thereon shall be due and payable on the Maturity Date (as defined in the Loan Agreement); *provided, however*, that if such date is not a Payment Date (as defined in the Loan Agreement), then the Maturity Date shall be the Payment Date immediately preceding such date.

This promissory note (this "Note") is secured under the Indenture dated as of July 1, 2009, made by the Borrower to U.S. Bank National Association, as Trustee thereunder, as it has been or shall hereafter be supplemented, amended, consolidated or restated from time to time (the "Indenture"). This Note

is one of the Notes referred to in, and has been executed and delivered pursuant to, the Loan Agreement, and constitutes an "Obligation" (as defined in the Indenture) under the Indenture. This Note is equally and ratably secured, to the extent provided in the Indenture, by the Trust Estate, except and excluding the Excepted Property.

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer (in substantially the same form attached hereto as Exhibit A) duly executed, by the registered Holder (as defined in the Indenture) hereof or such Holder's attorney duly authorized in writing, a new secured promissory note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The principal hereof and accrued interest thereon may be declared to be forthwith due and payable in the manner, upon the conditions, and with the effect provided in the Indenture, and with respect to any other amount due under the Loan Agreement, as provided in the Indenture or the Loan Agreement.

The Borrower waives demand, presentment for payment, notice of dishonor, protest, notice of protest, and notice of non-payment of this Note.

This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF, the Borrower has caused this Note to be executed by a duly authorized officer of the Borrower.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

---

Name: Mark A. Bailey

Title: President and Chief Executive Officer

[TRUSTEE'S CERTIFICATE OF AUTHENTICATION APPEARS ON  
FOLLOWING PAGE]

This Note is one of the "Obligations" referred to in the Indenture, dated as of July 1, 2009, between Big Rivers Electric Corporation, as Grantor, and U.S. Bank National Association, as Trustee.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

## FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby  
sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

\_\_\_\_\_  
(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_  
the within Note and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_  
attorney to transfer said Note on the books kept for registration thereof, with full power  
of substitution in the premises.

Date: \_\_\_\_\_  
(Signature of Transferor)

NOTE: The signature to this assignment must  
correspond with the name as written upon the  
face of the within-mentioned instrument in  
every particular, without alteration or  
enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by  
an eligible guarantor institution (banks,  
stockbrokers, savings and loan associations  
and credit unions with membership in an  
approved signature guarantee medallion  
program) pursuant to S.E.C. Rule 17Ad-15.

National Rural Utilities Cooperative Finance Corporation hereby authorizes the Trustee  
as Obligation Registrar for the First Mortgage Notes, Series 2012B to transfer this Note  
under the Indenture pursuant to the instructions, above.

National Rural Utilities Cooperative Finance  
Corporation

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

**BIG RIVERS ELECTRIC CORPORATION**  
**DOCUMENT RECORDING INFORMATION**  
**FOURTH SUPPLEMENTAL INDENTURE DATED AS OF AUGUST 14, 2013**

<b>COUNTY</b>	<b>DOCUMENT</b>	<b>RECORDING DATE</b>	<b>RECORDING TIME</b>	<b>RECORDING REFERENCE</b>
Breckinridge	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	11:37 a.m.	Mortgage Book 400, page 458
Caldwell	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	10:48 a.m.	Mortgage Book 291, page 119
Crittenden	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	10:10 a.m.	Mortgage Book 202, page 669
Daviess	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	8:59 a.m.	Mortgage Book 1964, page 340
Hancock	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	2:56 p.m.	Mortgage Book 197, page 389
Henderson	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	10:09 a.m.	Mortgage Book 1147, page 68
Hopkins	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	11:55 a.m.	Mortgage Book 1083, page 547
Livingston	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	9:35 a.m.	Mortgage Book 286, page 416
Marshall	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	12:45 p.m.	Mortgage Book 779, page 150
McCracken	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	11:50 a.m.	Mortgage Book 1407, page 726
Meade	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	1:15 p.m.	Mortgage Book 729, page 527
Ohio	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	11:49 a.m.	Mortgage Book 484, page 579
Union	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	1:54 p.m.	Mortgage Book 403, page 468
Webster	Fourth Supplemental Indenture Dated as of August 14, 2013	August 15, 2013	2:17 p.m.	Mortgage Book 312, page 772

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**FOURTH SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of August 14, 2013

Relating to the Big Rivers Electric Corporation  
First Mortgage Notes, Series 2013A  
Authorized by this Fourth Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

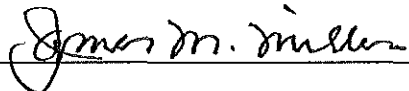
**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**FIRST MORTGAGE OBLIGATIONS**

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- 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 2 THROUGH 3.
- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: 

**THIS FOURTH SUPPLEMENTAL INDENTURE**, dated as of August 14, 2013 (this "Fourth Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, the Company has heretofore entered into a Revolving Line of Credit Agreement, dated as of July 16, 2009 (the "Revolving Credit Agreement"), with National Rural Utilities Cooperative Finance Corporation ("CFC"), pursuant to which CFC has agreed to make advances on a line of credit and to issue letters of credit in an amount not to exceed \$50,000,000; and

**WHEREAS**, the Company and CFC have agreed to extend the term of the Revolving Credit Agreement and to secure loans to the Company under the Original Indenture and, in connection herewith, the Company will enter into an Amended and Restated Revolving Line of Credit Agreement, dated as of August 19, 2013 (the "Credit Agreement"), with CFC, and, in connection therewith, the Company will secure certain of its obligations under the Credit Agreement under this Fourth Supplemental Indenture; and

**WHEREAS**, the Company desires to execute and deliver this Fourth Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Notes, Series 2013A, in the principal amount of \$50,000,000 (the "First Mortgage Notes, Series 2013A") as an Additional Obligation and specifying the form and provisions of the First Mortgage Notes, Series 2013A; and

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the



principal of and interest on the First Mortgage Notes, Series 2013A, to make the First Mortgage Notes, Series 2013A issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Notes, Series 2013A, in accordance with its terms, have been done and taken; and the execution and delivery of this Fourth Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS FOURTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Notes, Series 2013A, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Notes, Series 2013A are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture 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 of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the 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 in the Original Indenture not to be deemed part of the Trust Estate) being part of 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 of the Original Indenture 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 under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Notes, Series 2013A are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, 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**

### **THE FIRST MORTGAGE NOTES, SERIES 2013A AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this Fourth Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Notes, Series 2013A.**

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Notes, Series 2013A" (hereinafter referred to as the "First Mortgage Notes, Series 2013A"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.05 hereof. The First Mortgage Notes, Series 2013A are the same Notes described and defined in the Credit Agreement as the "Note." The aggregate principal face amount of the First Mortgage Notes, Series 2013A which shall be authenticated and delivered and Outstanding at any one time is limited to \$50,000,000.

The First Mortgage Notes, Series 2013A shall be dated August 19, 2013 and shall mature on July 16, 2017. The First Mortgage Notes, Series 2013A shall bear interest at the CFC Line of Credit Rate (as defined in the Credit Agreement) and interest shall be payable as provided in Section 3.05 of the Credit Agreement. Interest shall accrue at a rate calculated pursuant to Section 3.05C of the Credit Agreement. Payments of principal on the First Mortgage Notes, Series 2013A shall be made pursuant to Section 3.05 of the Credit Agreement. Payments of interest on the First Mortgage Notes, Series 2013A shall be made pursuant to Section 3.05D of the Credit Agreement. In addition, upon the occurrence of an event specified in Section 3.07A or 3.07B of the Credit Agreement, Advances (as defined in the Credit Agreement) shall bear interest at the Default Rate (as defined in the Credit Agreement), in the manner set forth in Section 3.07 of the Credit Agreement. The principal of, and the fees and interest on, the First Mortgage Notes, Series 2013A 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 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such interest payment date. Interest on the First Mortgage Notes, Series 2013A shall

be computed for the actual number of days the loan is outstanding on a basis determined pursuant to Section 3.05E of the Credit Agreement. If any payment to be made by the Company hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

The Company will act as the Paying Agent for the First Mortgage Notes, Series 2013A.

The First Mortgage Notes, Series 2013A shall be issued as fully registered notes without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The First Mortgage Notes, Series 2013A shall be registered in the name of CFC at 20701 Cooperative Way, Dulles, Virginia 20166 in certificated form.

### **SECTION 1.03. Mandatory Prepayment**

(a) The First Mortgage Notes, Series 2013A shall be subject to mandatory prepayment pursuant to Section 3.09 of the Credit Agreement.

(b) The First Mortgage Notes, Series 2013A that the Company acquires and surrenders (other than by means of mandatory prepayments as provided herein) will be credited against future mandatory prepayments for such First Mortgage Notes, Series 2013A and the principal payment to be made on the maturity date of such First Mortgage Notes, Series 2013A, in proportion to the respective amounts of those mandatory prepayments, subject to authorized denominations.

### **SECTION 1.04. Optional Prepayment**

The Company shall have the right at any time and from time to time to prepay the First Mortgage Notes, Series 2013A, in whole or in part, on or prior to their stated maturity only to the extent permitted by Section 3.08 of the Credit Agreement. Prior to any prepayment, the Company shall select the Advances (as defined in the Credit Agreement) to be prepaid and shall notify CFC by telephone (confirmed by telecopy) of such selection not later than 11:00 am, local time at CFC's offices in Dulles, Virginia one (1) Business Day before the scheduled date of such prepayment.

### **SECTION 1.05. Form of the First Mortgage Notes, Series 2013A.**

The First Mortgage Notes, Series 2013A and the Trustee's authentication certificate to be executed on the First Mortgage Notes, Series 2013A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

## **ARTICLE II**

### **MISCELLANEOUS**

#### **SECTION 2.01. Supplemental Indenture.**

This Fourth Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. Except to the extent inconsistent with the express terms of this Fourth Supplemental Indenture and the Credit Agreement, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2013A to the same extent as if specifically set forth herein.

#### **SECTION 2.02. Recitals.**

All recitals in this Fourth Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Fourth Supplemental Indenture or the First Mortgage Notes, Series 2013A (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2013A; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Credit Agreement, and it will not be responsible for or charged with knowledge of any terms of the Credit Agreement.

#### **SECTION 2.03. Successors and Assigns.**

Whenever in this Fourth Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Fourth Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

#### **SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Fourth Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Fourth Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Fourth Supplemental Indenture contained by or on behalf of the Company shall be for the sole

and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This Fourth Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Fourth Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

the address of the Trustee, as secured party, for the purpose of Uniform Commercial Code filings is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

and the mailing address of the Trustee for notices is:

U.S. Bank National Association  
Corporate Trust Services  
225 Asylum Street, 24<sup>th</sup> Floor  
Hartford, Connecticut 06103  
ATTN: Philip G. Kane, Jr. (Big Rivers 2009 Indenture:  
First Mortgage Notes, Series 2013A)


Additionally, this Fourth Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company and Trustee are authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created; *provided* that the Trustee has no obligation to prepare or make any such filings.

[Signatures on Next Page.]






**U.S. BANK NATIONAL ASSOCIATION, as  
Trustee**

  
Name: Maryanne Dufresne  
Title: Vice President

THE FOREGOING instrument was acknowledged before me this 19 day of August, 2013, by Maryanne Y. Dufresne, Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

  
 Notary Public's Signature  
 Notary Public, State of CT  
 County of \_\_\_\_\_  
 My commission expires NOV. 30, 2017

Fourth Supplemental Indenture

## **EXHIBIT A**

### **RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009**

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

## EXHIBIT B

**THIS SERIES 2013A FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.**

**CFC Loan No. [ ]**

**\$50,000,000**

**BIG RIVERS ELECTRIC CORPORATION**

**FIRST MORTGAGE NOTES, SERIES 2013A**

**ISSUANCE DATE: [ ], 2013**

BIG RIVERS ELECTRIC CORPORATION, a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky (the "Borrower"), for value received, hereby promises to pay, without setoff, deduction, recoupment or counterclaim, to the order of NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (the "Payee"), at its office in Dulles, Virginia or such other location as the Payee may designate to the Borrower, in lawful money of the United States, the principal sum of FIFTY MILLION AND 00/100 DOLLARS (\$50,000,000.00), or such lesser sum of the aggregate unpaid principal amount of all advances made by the Payee pursuant to that certain Amended and Restated Revolving Line of Credit Agreement, dated as of even date herewith, between the Borrower and the Payee, as it may be amended from time to time (herein called the "Credit Agreement"), and to pay interest on all amounts remaining unpaid hereunder from the date of each advance in like money, at said office, at the rate and in amounts and payable on the dates provided in the Credit Agreement together with any other amount payable under the Credit Agreement. If not sooner paid, any balance of the principal amount and interest accrued thereon shall be due and payable on the Maturity Date (as defined in the Credit Agreement).

This promissory note (this "Note") is secured under the Indenture dated as of July 1, 2009, made by the Borrower to U.S. Bank National Association, as Trustee thereunder, as it has been or shall hereafter be supplemented, amended, consolidated or restated from time to time (the "Indenture"). This Note is one of the Notes referred to in, and has been executed and delivered pursuant to, the Credit Agreement, and constitutes an "Obligation" (as defined in the

Indenture) under the Indenture. This Note is equally and ratably secured, to the extent provided in the Indenture, by the Trust Estate, except and excluding the Excepted Property.

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer (in substantially the same form attached hereto as Exhibit A) duly executed, by the registered Holder (as defined in the Indenture) hereof or such Holder's attorney duly authorized in writing, a new secured promissory note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The principal hereof and accrued interest thereon may be declared to be forthwith due and payable in the manner, upon the conditions, and with the effect provided in the Indenture, and with respect to any other amount due under the Credit Agreement, as provided in the Indenture or the Credit Agreement.

The Borrower waives demand, presentment for payment, notice of dishonor, protest, notice of protest, and notice of non-payment of this Note.

This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be executed by a duly authorized officer of the Borrower.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

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Name: Mark A. Bailey

Title: President and Chief Executive Officer

**[TRUSTEE'S CERTIFICATE OF AUTHENTICATION APPEARS ON  
FOLLOWING PAGE]**



This Note is one of the "Obligations" referred to in the Indenture, dated as of July 1, 2009, between Big Rivers Electric Corporation, as Grantor, and U.S. Bank National Association, as Trustee.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby  
sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

\_\_\_\_\_  
(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_  
the within Note and all rights thereunder, hereby irrevocably constituting and appointing  
\_\_\_\_\_  
attorney to transfer said Note on the books kept for registration thereof, with full power  
of substitution in the premises.

Date: \_\_\_\_\_  
(Signature of Transferor)

NOTE: The signature to this assignment must  
correspond with the name as written upon the  
face of the within-mentioned instrument in  
every particular, without alteration or  
enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by  
an eligible guarantor institution (banks,  
stockbrokers, savings and loan associations  
and credit unions with membership in an  
approved signature guarantee medallion  
program) pursuant to S.E.C. Rule 17Ad-15.

National Rural Utilities Cooperative Finance Corporation hereby authorizes the Trustee  
as Obligation Registrar for the First Mortgage Notes, Series 2013A to transfer this Note  
under the Indenture pursuant to the instructions, above.

National Rural Utilities Cooperative Finance  
Corporation

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

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**FIFTH SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of February 23, 2015

Relating to the Big Rivers Electric Corporation  
First Mortgage Notes, Series 2015A  
Authorized by this Fifth Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

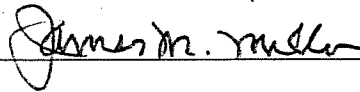
**FIRST MORTGAGE OBLIGATIONS**

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- 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 2 THROUGH 4.
- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_



**THIS FIFTH SUPPLEMENTAL INDENTURE**, dated as of February 23, 2015 (this "Fifth Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, in connection herewith, the Company will enter into a Senior Secured Credit Agreement, dated as of March 5, 2015 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), with the several financial institutions or entities from time to time parties thereto (the "Lenders"), National Rural Utilities Cooperative Finance Corporation, as administrative agent, lead arranger, issuing lender and swingline lender (the "Administrative Agent") and Regions Bank, as syndication agent, pursuant to which the Lenders have agreed to loan the Company, on a revolving basis, up to \$130,000,000 in principal amount at any time outstanding and, in connection therewith, the Company will secure certain of its obligations under the Credit Agreement under this Fifth Supplemental Indenture; and

**WHEREAS**, the Company desires to execute and deliver this Fifth Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Notes, Series 2015A, in the principal amount of \$130,000,000 at any time outstanding (the "First Mortgage Notes, Series 2015A") as an Additional Obligation and specifying the form and provisions of the First Mortgage Notes, Series 2015A; and

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Notes, Series 2015A, to make the First Mortgage Notes, Series 2015A issued hereunder, when executed by the Company,

authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Notes, Series 2015A, in accordance with their terms, have been done and taken; and the execution and delivery of this Fifth Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS FIFTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Notes, Series 2015A, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Notes, Series 2015A are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture 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 of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the 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 in the Original Indenture not to be deemed part of the Trust Estate) being part of 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 of the Original Indenture 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 under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.



**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Notes, Series 2015A are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, 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**

### **THE FIRST MORTGAGE NOTES, SERIES 2015A AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this Fifth Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Notes, Series 2015A.**

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Notes, Series 2015A" (hereinafter referred to as the "First Mortgage Notes, Series 2015A"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.06 hereof. The First Mortgage Notes, Series 2015A are the same Notes described and defined in the Credit Agreement as the "Secured Promissory Note." The aggregate principal face amount of the First Mortgage Notes, Series 2015A which shall be authenticated and delivered and Outstanding at any one time is limited to \$130,000,000. The First Mortgage Notes, Series 2015A shall be dated March 5, 2015 and are due March 5, 2018.

The First Mortgage Notes, Series 2015A shall bear interest at the rates and be payable on the Interest Payment Dates (as defined in the Credit Agreement) set forth in the Credit Agreement. The principal of and interest on the First Mortgage Notes, Series 2015A 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 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such Interest Payment Date (as defined in the Credit Agreement). Interest on the First Mortgage Notes, Series 2015A shall be computed pursuant to the Credit Agreement. The Company will act as the Paying Agent for the First Mortgage Notes, Series 2015A and the Trustee shall be Obligation Registrar pursuant to Section 3.7 of the Original Indenture.

#### **SECTION 1.03. Repayment.**

Repayment of the First Mortgage Notes, Series 2015A shall be made pursuant to the Credit Agreement.

#### **SECTION 1.04. Voluntary Prepayment.**

The Company may at any time and from time to time prepay the First Mortgage Notes, Series 2015A, as provided in the Credit Agreement.

#### **SECTION 1.05. Mandatory Prepayment.**

The Company shall prepay the First Mortgage Notes, Series 2015A, pursuant to the mandatory prepayment provisions of the Credit Agreement.

#### **SECTION 1.06. Form of the First Mortgage Notes, Series 2015A.**

The First Mortgage Notes, Series 2015A and the Trustee's authentication certificate to be executed on the First Mortgage Notes, Series 2015A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

#### **SECTION 1.07. Registration and Transfer of the First Mortgage Notes, Series 2015A.**

The First Mortgage Notes, Series 2015A shall be issued as fully registered notes without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The First Mortgage Notes, Series 2015A shall be registered in the name of the Lenders (as defined in the Credit Agreement) in certificated form. Transfers of the First Mortgage Notes, Series 2015A must occur under the terms of the Credit Agreement and the Indenture. To affect a transfer under the Indenture, Holders must fill in and execute the Transfer Notice attached to the First Mortgage Notes, Series 2015A (the "Transfer Notice") and submit the First Mortgage Notes, Series 2015A and the Transfer Notice to the Administrative Agent. Upon countersignature by the Administrative Agent of the Transfer Notice the Administrative Agent shall surrender such First Mortgage Notes, Series 2015A, together with the completed Transfer Notice, to the Trustee for registration of transfer pursuant to the provisions of the Indenture.

### **ARTICLE II**

#### **MISCELLANEOUS**

#### **SECTION 2.01. Supplemental Indenture.**

This Fifth Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2015A to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this Fifth Supplemental Indenture or the Credit

Agreement, in which case this Fifth Supplemental Indenture or the Credit Agreement, as applicable, shall apply.

**SECTION 2.02. Recitals.**

All recitals in this Fifth Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Fifth Supplemental Indenture or the First Mortgage Notes, Series 2015A (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2015A; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Credit Agreement, and it will not be responsible for or charged with knowledge of any terms of the Credit Agreement.

**SECTION 2.03. Successors and Assigns.**

Whenever in this Fifth Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Fifth Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

**SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Fifth Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Fifth Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Fifth Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This Fifth Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Fifth Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Fifth Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]

# BIG RIVERS ELECTRIC CORPORATION

By:

Name: Michael Chambliss

Title: Vice President System Operations

Attest:

Name: Lindsay Barron

Title: Chief Financial Officer

COMMONWEALTH OF KENTUCKY

)

) SS

COUNTY OF HENDERSON

)

WITNESS my hand and official seal.

Paula Mitchell

Notary Public's Signature

Notary Public – Kentucky, State at Large

My commission expires: 1-12-17

(Notarial Seal)



## EXHIBIT A

### RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578



## EXHIBIT B

THIS SERIES 2015A FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

R-

**BIG RIVERS ELECTRIC CORPORATION**

**FIRST MORTGAGE NOTES, SERIES 2015A**

\$[ ]

March 5, 2015

**FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION**, a Kentucky cooperative corporation (the "**Borrower**") **HEREBY PROMISES TO PAY** to [ ] (the "**Lender**"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [ ] DOLLARS (\$[ ]), or the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding at the end of the Availability Period (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.11 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note all payments of principal and interest in respect of the Loan, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Senior Secured Credit Agreement, dated as of March 5, 2015, among the Borrower, the several financial institutions or entities from time to time parties thereto, National Rural Utilities Cooperative Finance Corporation, as administrative agent, lead arranger, issuing lender and swingline lender, and Regions Bank, as syndication agent, as amended, amended and restated, supplemented or modified from time to time (the "**Credit Agreement**"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

Exh. B-1

The Credit Agreement provides for prepayments on the terms and conditions specified therein, including payment of breakage costs pursuant to Section 2.14 of the Credit Agreement.

This Note is an Obligation (as defined in the Indenture) subject to and is secured by that certain Indenture, dated as of July 1, 2009, as supplemented, by and between the Borrower and U.S. Bank National Association, as Trustee (the "Indenture").

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer duly executed, by the registered Holder hereof (or such Holder's attorney duly authorized in writing) and countersigned by the Administrative Agent, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

**BIG RIVERS ELECTRIC  
CORPORATION**

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

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

Title: \_\_\_\_\_

EXHIBIT

This is one of the Obligations (as defined in the Indenture) of the series designated therein referred to in the Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

EXHIBIT B

[illegible]

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

(Please print or typewrite name and address including zip code of assignee)

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

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

(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to S.E.C. Rule 17Ad-15.

The Administrative Agent hereby authorizes the Trustee as Obligation Registrar (as defined in the Indenture) for the First Mortgage Notes, Series 2015A to transfer this Note under the Indenture pursuant to the instructions, above.

National Rural Utilities Cooperative Finance Corporation,  
as Administrative Agent

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

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

Title: \_\_\_\_\_

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**SIXTH SUPPLEMENTAL AND AMENDATORY INDENTURE**

(to that certain Indenture dated as of July 1, 2009)  
dated as of September 5, 2017

Relating to Amendments to the Fifth Supplemental Indenture  
dated as of February 23, 2015  
Authorizing the Big Rivers Electric Corporation First Mortgage Notes, Series 2015A

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**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 2 THROUGH 4.
  - THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_



**THIS SIXTH SUPPLEMENTAL AND AMENDATORY INDENTURE**, dated as of September 5, 2017 (this "Sixth Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented and amended being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of the Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, the Company and CFC have entered into that certain Senior Secured Credit Agreement, dated as of March 5, 2015, by and among the Company, the lenders party thereto, the issuing lender, the swingline lender and the administrative agent (the "CFC Credit Agreement");

**WHEREAS**, in connection with the CFC Credit Agreement, the Company issued a series of notes entitled First Mortgage Notes, Series 2015A, in the principal amount of \$130,000,000 at any time outstanding (the "Outstanding Series 2015A Notes") pursuant to the Fifth Supplemental Indenture, dated as of February 23, 2015 (the "Fifth Supplemental Indenture");

**WHEREAS**, the Company and CFC wish to enter into Amendment No. 1 to the Senior Secured Credit Agreement, dated as of September 19, 2017 ("Amendment No. 1"), between the Company and each lender thereto and CFC as a lender, lead arranger, issuing lender, the swingline lender and as administrative agent for the lenders in order to, among other things, decrease the principal amount of the Outstanding Series 2015A Notes to \$100,000,000 at any time outstanding (the "Series 2015A Notes") and to extend the maturity date of such Notes;

**WHEREAS**, the Board of Directors of the Company has determined in connection with the changes made in Amendment No. 1 that it is in the best interests of the Company to make certain amendments to the Fifth Supplemental Indenture as provided herein;

**WHEREAS**, Section 12.2 of the Indenture provides that, with the consent of each Holder of the Obligations of all series then Outstanding affected by such Supplemental Indenture, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.2;

**WHEREAS**, in order to effectuate the changes set forth in Amendment No. 1, it is necessary that all Holders of the Outstanding Series 2015A Notes consent to the amendments to the Fifth Supplemental Indenture set forth herein;

**WHEREAS**, this Sixth Supplemental Indenture is permitted pursuant to the provisions of Section 12.2 of the Indenture; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the Series 2015A Notes, to make the Series 2015A Notes issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligations of the Company, and to constitute the Indenture a valid and binding lien for the security of the Series 2015A Notes, in accordance with its terms, have been done and taken; and the execution and delivery of this Sixth Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS SIXTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the Series 2015A Notes, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the Series 2015A Notes are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein or herein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Indenture and to the rights of the Company under the Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Indenture owned on the date of execution of the Original Indenture 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 of

"Excepted Property" in the Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Indenture, subject to the lien of the 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 in the Indenture not to be deemed part of the Trust Estate) being part of 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 of the Indenture 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 under the Indenture and subject to the provisions of Article V of the Indenture, and not in limitation of the rights elsewhere provided in the Indenture, including the rights set forth in Article V of the Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the Series 2015A Notes are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Indenture, 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**

### **AMENDMENTS TO FIFTH SUPPLEMENTAL INDENTURE TO BE EFFECTIVE UPON CONSENT OF THE HOLDERS OF ALL OF THE OUTSTANDING SERIES 2015A NOTES**

#### **SECTION 1.01. Definitions**

All words and phrases defined in Article I of the Indenture shall have the same meaning in this Sixth Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Amendment to Section 1.02 of the Fifth Supplemental Indenture.**

Upon the effective date of the amendments set forth in this Article I, the last two sentences of the first paragraph under Section 1.02 of Fifth Supplemental Indenture shall be amended to read as follows:

"The aggregate principal amount of the First Mortgage Notes, Series 2015A which shall be authenticated and delivered and Outstanding at any one time is limited to \$100,000,000. The First Mortgage Notes, Series 2015A shall be dated September 19, 2017 and are due September 19, 2020.

#### **SECTION 1.03. Amendment to the Form of First Mortgage Notes, Series 2015A contained in Exhibit B of the Fifth Supplemental Indenture.**

Upon the effective date of the amendments set forth in this Article I, the dated date of March 5, 2015 contained on the first page of the First Mortgage Notes, Series 2015A contained in Exhibit B to the Fifth Supplemental Indenture is hereby amended to have a dated date of September 19, 2017:



**SECTION 1.04. Authentication of Series 2015A Notes.**

Upon the effective date of the amendments to the Fifth Supplemental Indenture set forth in this Article I, the Company shall execute and the Trustee shall authenticate and deliver Series 2015A Notes substantially in the form of Exhibit B to the Fifth Supplemental Indenture, as amended hereby, in the aggregate principal amount of \$100,000,000 at any time Outstanding.

**ARTICLE II**

**MISCELLANEOUS**

**SECTION 2.01. Supplemental Indenture.**

This Sixth Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the Series 2015A Notes to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this Sixth Supplemental Indenture, the CFC Credit Agreement or Amendment No. 1, in which case this Sixth Supplemental Indenture, the CFC Credit Agreement or Amendment No. 1, as applicable, shall apply.

**SECTION 2.02. Recitals.**

All recitals in this Sixth Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Sixth Supplemental Indenture or the Series 2015A Notes (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the Series 2015A Notes; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the CFC Credit Agreement or Amendment No. 1, and it will not be responsible for or charged with knowledge of any terms of the CFC Credit Agreement or Amendment No. 1.

**SECTION 2.03. Successors and Assigns.**

Whenever in this Sixth Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Sixth Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid,

bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

**SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Sixth Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Sixth Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Sixth Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Effective Date.**

This Sixth Supplemental Indenture, shall be effective upon the receipt by the Trustee of the certificates, opinions and other documents required under Sections 1.6, 12.2 and 12.3 of the Original Indenture which may be evidenced by the Trustee's authentication of the Series 2015A Notes under this Sixth Supplemental Indenture.

**SECTION 2.06. Counterparts.**

This Sixth Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.07. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Sixth Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Sixth Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

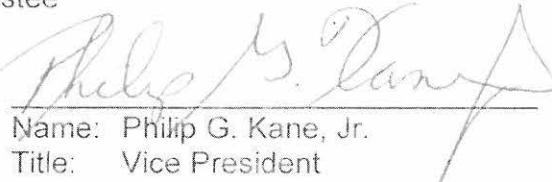
[Signatures on Next Page.]





Trustee:


U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By:   
Name: Philip G. Kane, Jr.  
Title: Vice President

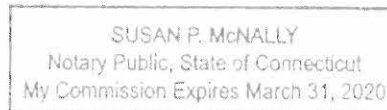
STATE OF CONNECTICUT     )  
  )  
COUNTY OF HARTFORD     )

THE FOREGOING instrument was acknowledged before me this 5<sup>th</sup> day of  
September, 2017, by Philip G. Kane, Jr., Vice President of U.S. Bank National  
Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

  
Notary Public's Signature  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

(Notarial Seal)



## EXHIBIT A

### RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

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**SEVENTH SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of October 9, 2017

Relating to the Big Rivers Electric Corporation First Mortgage Note, Series 2017B

Authorized by this Seventh Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

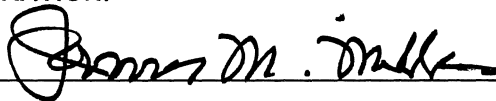
**FIRST MORTGAGE OBLIGATIONS**

---

- 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 2 THROUGH 4.
- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_



AFTER RECORDING RETURN TO:

Bryan R. Reynolds  
100 St Ann Street  
Owensboro, KY 42303

**THIS SEVENTH SUPPLEMENTAL INDENTURE**, dated as of October 9, 2017 (this "Seventh Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented and amended being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of the Indenture) by the Trustee from time to time under the Indenture. The Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, in connection herewith, the Company will enter into a Loan Agreement, dated as of October 23, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), with National Rural Utilities Cooperative Finance Corporation ("CFC"), pursuant to which the CFC has agreed to loan the Company \$15,000,000 in principal amount and, in connection therewith, the Company will secure certain of its obligations under the Loan Agreement under this Seventh Supplemental Indenture;

**WHEREAS**, the Company desires to execute and deliver this Seventh Supplemental Indenture, in accordance with the provisions of the Indenture, for the purpose of providing for the creation and designation of its First Mortgage Note, Series 2017B, in the principal amount of \$15,000,000 (the "Series 2017B Note") as an Additional Obligation and specifying the form and provisions of the Series 2017B Note;

**WHEREAS**, Section 12.1 of the Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1;

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the Series 2017B Note, to make the Series 2017B Note issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the Series 2017B Note, in accordance with its terms, have been done and taken; and the execution and delivery of this Seventh Supplemental Indenture has been in all respects duly authorized; and

**WHEREAS**, this Seventh Supplemental Indenture is permitted pursuant to the provisions of Sections 12.1 C of the Indenture;

**NOW, THEREFORE, THIS SEVENTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the Series 2017B Note, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the Series 2017B Note is secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein or herein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Indenture and to the rights of the Company under the Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Indenture owned on the date of execution of the Original Indenture 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 of "Excepted Property" in the Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Indenture, subject to the lien of the 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 in the Indenture not to be deemed part of the Trust Estate) being part of 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 of the Indenture 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 under the Indenture and subject to the provisions of Article V of the Indenture, and not in limitation of the rights elsewhere provided in the Indenture, including the rights set forth in Article V of the Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the Series 2017B Note is to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Indenture, 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**

### **THE FIRST MORTGAGE NOTE, SERIES 2017B AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Indenture shall have the same meaning in this Seventh Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Note, Series 2017B.**

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Note, Series 2017B" (hereinafter referred to as the "Series 2017B Note"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.05 hereof. The Series 2017B Note is the same Note described and defined in the Loan Agreement as the "Note." The aggregate principal face amount of the Series 2017B Note which shall be authenticated and delivered is limited to \$15,000,000. The Series 2017B Note shall be dated October 23, 2017 and is due October 23, 2020.

The Series 2017B Note shall bear interest at the rates and be payable on the Payment Date (as defined in the Loan Agreement) set forth in the Loan Agreement. The principal of and interest on the Series 2017B Note 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 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such Interest Payment Date (as defined in the Loan Agreement). Interest on the Series 2017B Note shall be computed pursuant to the Loan Agreement. The Company will act as the Paying Agent for the Series 2017B Note and the Trustee shall be the Obligation Registrar pursuant to Section 3.7 of the Indenture.

#### **SECTION 1.03. Repayment.**

Repayment of the Series 2017B Note shall be made pursuant to the provisions of the Loan Agreement.

#### **SECTION 1.04. Optional Prepayment.**

The Company may at any time and from time to time optionally prepay the Series 2017B Note, as provided in the Loan Agreement.

**SECTION 1.05. Form of the Series 2017B Note.**

The Series 2017B Note and the Trustee's authentication certificate to be executed on the Series 2017B Note shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Indenture.

**SECTION 1.06. Registration of the Series 2017B Note.**

The Series 2017B Note shall be issued as a fully registered note without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The Series 2017B Note shall be registered in the name of the Lender (as defined in the Loan Agreement) in certificated form.

**SECTION 1.07. Use of Proceeds.**

The Company shall use the proceeds of the loans evidenced by the Series 2017B Note to refinance \$15,000,000 of the outstanding principal amount of the RUS 2009 Promissory Note Series A dated July 16, 2009.

**ARTICLE II**

**MISCELLANEOUS**

**SECTION 2.01. Supplemental Indenture.**

This Seventh Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the Series 2017B Note to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this Seventh Supplemental Indenture or the Loan Agreement, in which case this Seventh Supplemental Indenture or the Loan Agreement shall apply.

**SECTION 2.02. Recitals.**

All recitals in this Seventh Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Seventh Supplemental Indenture or the Series 2017B Note (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the Series 2017B Note; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The

Trustee is not a party to the Loan Agreement, and it will not be responsible for or charged with knowledge of any terms of the Loan Agreement.

**SECTION 2.03. Successors and Assigns.**

Whenever in this Seventh Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Seventh Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

**SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Seventh Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Seventh Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Seventh Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Effective Date.**

This Seventh Supplemental Indenture, shall be effective upon the receipt by the Trustee of the certificates, opinions and other documents required under Sections 1.6, 12.1 and 12.3 of the Indenture which may be evidenced by the Trustee's authentication of the Series 2017B Note under this Seventh Supplemental Indenture.

**SECTION 2.06. Counterparts.**

This Seventh Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.07. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Seventh Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420


and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Seventh Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]

By:

  
Name: Robert W. Berry

Andrew Dub

Lindsay Durbin

CFO

)

)

)

Robert Berny, President

WITNESS my hand and official seal.


Notary Public's Signature

Notary Public – Kentucky, State at Large

My commission expires: 1-12-21

Trustee:

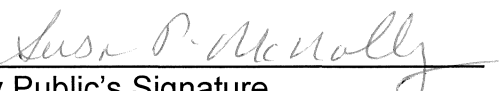
**U.S. BANK NATIONAL ASSOCIATION**, as  
Trustee

By:   
Name: Philip G. Kane, Jr.  
Title: Vice President

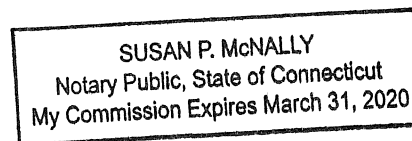
STATE OF CONNECTICUT     )  
   )  
COUNTY OF HARTFORD     )

THE FOREGOING instrument was acknowledged before me this 11<sup>th</sup> day of  
October, 2017, by Philip G. Kane, Jr., Vice President of U.S. Bank National Association,  
a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

  
Notary Public's Signature  
Notary Public, State of \_\_\_\_\_,  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

(Notarial Seal)



## EXHIBIT A

### RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578



## EXHIBIT B

THIS SERIES 2017B FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

CFC Loan No.: KY062-LUM-3000-FMD001(9006)

\$15,000,000

### BIG RIVERS ELECTRIC CORPORATION FIRST MORTGAGE NOTE, SERIES 2017B

ISSUANCE DATE: October 23, 2017

BIG RIVERS ELECTRIC CORPORATION, a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky (the "Borrower"), for value received, hereby promises to pay, without setoff, deduction, recoupment or counterclaim, to NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION or its registered assigns (the "Payee"), at such location as designated by the Payee from time to time, in lawful money of the United States, the principal sum of FIFTEEN MILLION AND 00/100 DOLLARS (\$15,000,000.00), pursuant to that certain Loan Agreement, dated as of even date herewith, between the Borrower and the Payee, as it may be amended from time to time (herein called the "Loan Agreement"), and to pay interest on all amounts remaining unpaid hereunder from the date hereof, at the rate and in amounts and payable on the dates provided in the Loan Agreement together with any other amount payable under the Loan Agreement. If not sooner paid, any balance of the principal amount and interest accrued thereon shall be due and payable on the Maturity Date (as defined in the Loan Agreement).

This promissory note (this "Note") is secured under the Indenture dated as of July 1, 2009, made by the Borrower to U.S. Bank National Association, as Trustee thereunder, as it has been or shall hereafter be supplemented, amended, consolidated or restated from time to time (the "Indenture"). This Note is the Note referred to in, and has been executed and delivered pursuant to, the Loan Agreement, and constitutes an "Obligation" (as defined in the Indenture) under the Indenture. This Note is equally and ratably secured, to the extent provided in the Indenture, by the Trust Estate.

Seventh Supplemental Indenture

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer (in substantially the same form attached hereto as Exhibit A) duly executed, by the registered Holder (as defined in the Indenture) hereof or such Holder's attorney duly authorized in writing, a new secured promissory note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The principal hereof and accrued interest thereon may be declared to be forthwith due and payable in the manner, upon the conditions, and with the effect provided in the Indenture, and with respect to any other amount due under the Loan Agreement, as provided in the Indenture or the Loan Agreement.

The Borrower waives demand, presentment for payment, notice of dishonor, protest, notice of protest, and notice of non-payment of this Note. The Borrower waives all rights of setoff, rescission, deduction, recoupment or defense, including the defense of usury, and represents that no such right of rescission, set-off, counterclaim, or defense is asserted with respect thereto.

The Payee or any subsequent holder of this Note may sell, transfer, assign and endorse over to one or more purchasers, transferees or assignees all or portion of its right, title and interest in and to the Loan, this Note, the Loan Agreement and the Indenture, provided, however, that the Payee's rights and obligations under the Indenture shall be transferred only to and to the extent that such rights and obligations pertain only to the Loan. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be executed by a duly authorized officer of the Borrower all as of the issuance date above written.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

\_\_\_\_\_  
Name: Robert W. Berry

Title: President and Chief Executive Officer

**[TRUSTEE'S CERTIFICATE OF AUTHENTICATION APPEARS ON  
FOLLOWING PAGE]**

This Note is one of the "Obligations" referred to in the Indenture, dated as of July 1, 2009, between Big Rivers Electric Corporation, as Grantor, and U.S. Bank National Association, as Trustee.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

EXHIBIT B

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby  
sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

\_\_\_\_\_  
\_\_\_\_\_  
(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_  
the within Note and all rights thereunder, hereby irrevocably constituting and appointing  
\_\_\_\_\_  
attorney to transfer said Note on the books kept for registration thereof, with full power  
of substitution in the premises.

Date: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of Transferor)

NOTE: The signature to this assignment must  
correspond with the name as written upon the  
face of the within-mentioned instrument in  
every particular, without alteration or  
enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by  
an eligible guarantor institution (banks,  
stockbrokers, savings and loan associations  
and credit unions with membership in an  
approved signature guarantee medallion  
program) pursuant to S.E.C. Rule 17Ad-15.

National Rural Utilities Cooperative Finance Corporation hereby authorizes the Trustee  
as Obligation Registrar for the First Mortgage Note, Series 2017B to transfer this Note  
under the Indenture pursuant to the instructions, above.

National Rural Utilities Cooperative Finance  
Corporation

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



**2017006349**

BRECKINRIDGE CO, KY FEE \$56.00

PRESENTED / LODGED: 10-16-2017 12:48 PM

RECORDED: 10-16-2017

JARED BUTLER

CLERK

BY: CINDY JOHNSON

DEPUTY CLERK

**BK: MTG 445**

**PG: 160-175**



2018000949

MT 1256 723 - 737

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**EIGHTH SUPPLEMENTAL AND AMENDATORY INDENTURE**

(to that certain Indenture dated as of July 1, 2009)

dated as of January 2, 2018

Relating to the Additional Obligations issued to Federal Financing Bank  
and Rural Utilities Service in connection with the W8 Loan and the X8 Loan,  
Authorized by this Eighth Supplemental and Amendatory Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**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 2 THROUGH 4.
  - THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_

**THIS EIGHTH SUPPLEMENTAL AND AMENDATORY INDENTURE**, dated as of January 2, 2018 (this "Eighth Supplemental 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"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented and amended being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in Article I of the Indenture) by the Trustee from time to time under the Indenture. The Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, the Company has heretofore executed and delivered to the United States of America, acting by and through the Administrator of the Rural Utilities Service ("RUS"), that certain Amended and Restated Loan Contract, dated as of July 16, 2009, and the Company is entering into that certain First Amended and Restated Loan Contract (the "Loan Contract") with the RUS which, among other things, provides the terms and conditions of a loan from the Federal Financing Bank ("FFB") in a principal amount of Twenty-Five Million Six Hundred Thirty Thousand Dollars (\$25,630,000) (the "W8 FFB Loan") and a loan from the FFB in a principal amount of Twenty Million Five Hundred Eleven Thousand Dollars (\$20,511,000) (the "X8 FFB Loan"); the W8 FFB Loan and the X8 FFB Loan are sometimes collectively referred to as the "FFB Loans";

**WHEREAS**, the Company's obligation to repay the FFB Loans will be evidenced by two Future Advance Promissory Notes, each dated the date set forth in Section 1.02 hereof;

**WHEREAS**, the RUS has committed upon specified terms and conditions to guarantee the repayment of the FFB Loans;

**WHEREAS**, the Company will be obligated to reimburse RUS for any payments made to FFB on behalf of the Company in connection with the FFB Loans;

**WHEREAS**, the Company's obligation to reimburse RUS for any payments under its guarantees to FFB will be evidenced by two Reimbursement Notes, each dated the date set forth in Section 1.02 hereof and issued pursuant Section 4.7 of the Indenture and which for purposes of the Indenture shall constitute Credit Enhancement Obligations;

**WHEREAS**, the Board of Directors of the Company has authorized four Additional Obligations, two of which are to be designated as the Future Advance



Promissory Notes (the "W8 FFB Note" and the "X8 FFB Note"), and two of which to be designated as the Reimbursement Notes (the "W8 Reimbursement Note" and the "X8 Reimbursement Note" and collectively with the W8 FFB Note and X8 FFB Note, the "W8 and X8 Notes"), respectively, each to be dated the applicable date set forth in Section 1.02 hereof and to be due on the applicable date set forth in Section 1.02 hereof, and the Company has complied or will comply with all provisions required to issue Additional Obligations provided for in the Indenture;

**WHEREAS**, the Company desires to execute and deliver this Eighth Supplemental Indenture, in accordance with the provisions of the Indenture, for the purpose of providing for the creation and designation of the W8 and X8 Notes as Additional Obligations and specifying the form and provisions of the W8 and X8 Notes;

**WHEREAS**, Section 12.1 of the Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1;

**WHEREAS**, the Board of Directors of the Company has determined that it is in the best interests of the Company to make certain amendments to the Indenture as provided herein;

**WHEREAS**, Section 12.2 of the Indenture provides that, with the consent of the Holders of not less than a majority in principal amount of the Obligations of all series then Outstanding affected by such Supplemental Indenture, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.2;

**WHEREAS**, this Eighth Supplemental Indenture is permitted pursuant to the provisions of Sections 12.1 C and 12.2 of the Indenture; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the W8 and X8 Notes, to make the W8 and X8 Notes issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligations of the Company, and to constitute the Indenture a valid and binding lien for the security of the W8 and X8 Notes, in accordance with their terms, have been done and taken; and the execution and delivery of this Eighth Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS EIGHTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the W8 and X8 Notes, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and

herein contained, to declare the terms and conditions on which the W8 and X8 Notes are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein or herein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Indenture and to the rights of the Company under the Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER,** that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Indenture owned on the date of execution of the Original Indenture 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 of "Excepted Property" in the Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Indenture, subject to the lien of the 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 in the Indenture not to be deemed part of the

Trust Estate) being part of 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 of the Indenture 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 under the Indenture and subject to the provisions of Article V of the Indenture, and not in limitation of the rights elsewhere provided in the Indenture, including the rights set forth in Article V of the Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the W8 and X8 Notes are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Indenture, 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

### THE W8 and X8 NOTES AND CERTAIN PROVISIONS RELATING THERETO

#### SECTION 1.01. Definitions.

All words and phrases defined in Article I of the Indenture shall have the same meaning in this Eighth Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### SECTION 1.02. Authorization and Terms of the W8 and X8 Notes.

(a) **W8 Notes.** There shall be established a series of Additional Obligations known as and entitled the "Future Advance Promissory Note – W8" and a series of Additional Obligations known as and entitled the Reimbursement Note – W8, the form, terms and conditions of which shall be substantially as set forth in this Section 1.02 and in Section 1.03 hereof.

The aggregate principal amount of the W8 FFB Note which may be authenticated and delivered is Twenty Five Million Six Hundred Thirty Thousand Dollars (\$25,630,000).

The aggregate principal amount of the W8 Reimbursement Note which may be authenticated and delivered is Twenty-Five Million Six Hundred Thirty Thousand Dollars (\$25,630,000).

The W8 FFB Note shall be authenticated and delivered pursuant to Section 4.2 of the Indenture. When the W8 FFB Note is duly executed and issued by the Company, authenticated and delivered by the Trustee and purchased by FFB, the W8 FFB Note will be equally and proportionately secured under the Indenture with all other Outstanding Secured Obligations.

All payments on the W8 FFB Note shall be made to FFB as described in the W8 FFB Note in lawful money of the United States which shall be immediately available on the date payment is due.

The W8 Reimbursement Note shall be authenticated and delivered as a Credit Enhancement Obligation pursuant to Section 4.7 of the Indenture. If the W8 Reimbursement Note is duly executed and issued by the Company, and authenticated and delivered by the Trustee then all amounts paid by the Government from time to time pursuant to that certain guarantee by RUS made by RUS to FFB of amounts payable to FFB under the FFB Note will be equally and proportionately secured under the Indenture with all other Outstanding Secured Obligations. The W8 Reimbursement Note shall be considered an Credit Enhancement Obligation, as defined in Section 4.7 of the Indenture, and shall be subject to the provisions of such Section 4.7 as if fully set forth

therein. RUS is hereby designated under the Indenture as the Credit Enhancer in connection with the W8 FFB Note.

All payments on the W8 Reimbursement Note shall be made to the RUS as described in the W8 Reimbursement Note in lawful money of the United States which shall be immediately available on the date payment is due.

The W8 Notes shall be dated as of January 2, 2018, shall be due on December 31, 2032 and shall bear interest at the rate determined as set forth therein. The W8 Notes may be subject to optional prepayment as more fully set forth in such W8 Notes.

**(b) X8 Notes.** There shall be established a series of Additional Obligations known as and entitled the "Future Advance Promissory Note – X8" and a series of Additional Obligations known as and entitled the Reimbursement Note – X8, the form, terms and conditions of which shall be substantially as set forth in this Section 1.02 and in Section 1.03 hereof.

The aggregate principal amount of the X8 FFB Note which may be authenticated and delivered is Twenty Million and Five Hundred Eleven Thousand Dollars (\$20,511,000).

The aggregate principal amount of the X8 Reimbursement Note which may be authenticated and delivered is Twenty Million and Five Hundred Eleven Thousand Dollars (\$20,511,000).

The X8 FFB Note shall be authenticated and delivered as a Conditional Obligation pursuant to Section 4.6 of the Indenture. If the X8 FFB Note is duly executed and issued by the Company, authenticated and delivered by the Trustee and purchased by FFB, then any advance under the X8 FFB Note made in compliance with Section 4.6 of the Indenture will be equally and proportionately secured under the Indenture with all other Outstanding Secured Obligations.

All payments on the X8 FFB Note shall be made to FFB as described in the X8 FFB Note in lawful money of the United States which shall be immediately available on the date payment is due.

The X8 Reimbursement Note shall be authenticated and delivered as a Credit Enhancement Obligation pursuant to Section 4.7 of the Indenture. If the X8 Reimbursement Note is duly executed and issued by the Company, and authenticated and delivered by the Trustee then all amounts paid by the Government from time to time pursuant to that certain guarantee by RUS made by RUS to FFB of amounts payable to FFB under the FFB Note and made in compliance with Section 4.6 of the Indenture will be equally and proportionately secured under the Indenture with all other Outstanding Secured Obligations. The X8 Reimbursement Note shall be considered an Credit Enhancement Obligation, as defined in Section 4.7 of the Indenture, and shall be

subject to the provisions of such Section 4.7 as if fully set forth therein. RUS is hereby designated under the Indenture as Credit Enhancer in connection with the X8 FFB Note.

All payments on the X8 Reimbursement Note shall be made to the RUS as described in the X8 Reimbursement Note in lawful money of the United States which shall be immediately available on the date payment is due.

The X8 Notes shall be dated as of January 2, 2018, shall be due on December 31, 2043 and shall bear interest at the rate determined as set forth therein. The X8 Notes may be subject to optional prepayment as more fully set forth in such X8 Notes.

If, upon the expiration of the Last Day of an Advance (as set forth on Schedule 4 to the Loan Contract) under the X8 FFB Note, the Company shall not have taken advances under such X8 FFB Note in an amount up to the total amount of the X8 Loan (as defined in the Loan Contract), then the Company shall deliver to the Trustee an Officers' Certificate certifying that the Company's right to receive an advance under the X8 Loan has terminated and the principal amount of X8 FFB Note equal to such unadvanced portion of the X8 Loan shall be treated as though it had never been Outstanding pursuant to the last sentence of the last paragraph of Section 4.1 D of the Indenture.

#### **SECTION 1.03. Form of the W8 and X8 Notes.**

The X8 and W8 FFB Notes and W8 and X8 Reimbursement Notes shall be promissory notes substantially in the forms authorized by Board Resolution and attached to the Officers' Certificate, pursuant to Section 2.1 of the Indenture, respectively, and the Trustee's authentication certificate to be executed on the W8 and X8 Notes shall be in the form set forth in Section 2.2 of the Indenture, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Indenture. The terms and conditions of the W8 and X8 FFB Notes and the W8 and X8 Reimbursement Notes are by this reference incorporated herein.

#### **SECTION 1.04. Use of Proceeds.**

The Company shall use the proceeds of the loans evidenced by the W8 and X8 FFB Notes to finance certain additions and improvements to the System.

## ARTICLE II

### AMENDMENTS TO INDENTURE TO BE EFFECTIVE UPON CONSENT OF NOT LESS THAN A MAJORITY IN PRINCIPAL AMOUNT OF THE OBLIGATIONS OF ALL SERIES THEN OUTSTANDING

#### SECTION 2.01. Additional Definition.

Upon the effective date of the amendments set forth in this Article II, the following definition shall be added to Section 1.1 of the Indenture:

**“Regulatory Agency”** means a public service commission, public utility commission or other governmental entity that oversees regulated utility activities and sets rates for the provision of electric service.

#### SECTION 2.02. Amendment to Definition of “Retired” Contained in Section 1.1 of the Indenture.

Upon the effective date of the amendments set forth in this Article II, the definition of **“Retired”** contained in the Indenture shall be amended to read as follows:

**“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; **PROVIDED, HOWEVER**, that with respect to any Bondable Property that would otherwise be considered as Retired under this definition, if

(a) the Company’s Rates to its members are regulated by a state Regulatory Agency at the time such Bondable Property initially would otherwise be considered as retired under this definition,

(b) such Regulatory Agency has approved the recovery in the Company’s Rates to its members of all or some portion of the value of such Bondable Property in the form of a regulatory or similar asset, and



(c) the Company has in place power purchase and sale or similar agreements with its members providing in the aggregate for the recovery of the amortization of such regulatory or similar assets in Rates, which agreements have a remaining term of not less than such approved recovery period,

then as and to the extent elected by the Company, and for so long as the Company is in compliance with the requirements of Section 13.14 and continues to recover such regulatory or similar assets in Rates in accordance with such Regulatory Agency approval, (1) such Bondable Property shall not be considered as Retired under this definition in an amount equal to the sum of the amount of such regulatory or similar asset approved by such Regulatory Agency plus any amounts related to such Bondable Property which were recorded on the books of the Company as regulatory assets at the time of such Retirement and which are authorized by such Regulatory Agency to be collected in Rates, and (2) to the extent that on the date of such Regulatory Agency approval the amount of Retirements for such Bondable Property exceeds the approved amount of such regulatory or similar assets, including those already recorded as regulatory assets at the time of such Retirement, then a portion of such Bondable Property in an amount equal to such excess shall be considered as Retired under this definition. Bondable Property shall not be considered as Retired under this definition during the pendency of any proceeding with a Regulatory Authority seeking regulatory or similar asset treatment with respect to such Bondable Property provided that the Company is diligently and in good faith pursuing such treatment through appropriate proceedings.

**SECTION 2.03. Effective Date of Amendments to the Original Indenture Contained in this Article II.**

The amendments to the Indenture contained in this Article II shall be effective upon receipt by the Trustee of the consents, certificates, opinions and other documents required under Sections 1.6, 12.2 and 12.3 of the Indenture.

**ARTICLE III**

**MISCELLANEOUS**

**SECTION 3.01. Supplemental Indenture.**

This Eighth Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Indenture shall be applicable to the W8 and X8 Notes to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this Eighth Supplemental Indenture, in which case this Eighth Supplemental Indenture shall apply.

### **SECTION 3.02. Recitals.**

All recitals in this Eighth Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Eighth Supplemental Indenture or the W8 and X8 Notes (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the W8 and X8 Notes; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Loan Contract, and it will not be responsible for or charged with knowledge of any terms of the Loan Contract.

### **SECTION 3.03. Successors and Assigns.**

Whenever in this Eighth Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Eighth Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

### **SECTION 3.04. No Rights, Remedies, Etc.**

Nothing in this Eighth Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Eighth Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Eighth Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

### **SECTION 3.05. Effective Date.**

This Eighth Supplemental Indenture, other than the provisions of Article II, shall be effective upon the receipt by the Trustee of the certificates, opinions and other documents required under Sections 1.6, 12.1 and 12.3 of the Indenture which may be evidenced by the Trustee's authentication of any W8 or X8 Notes under this Eighth Supplemental Indenture. The effectiveness of the provisions of Article II shall be determined as provided in Article II.

**SECTION 3.06. Counterparts.**

This Eighth Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 3.07. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Eighth Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Eighth Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]



STATE OF CONNECTICUT )  
 )  
COUNTY OF HARTFORD )

By:

THE FOREGOING instrument was acknowledged before me this 23 day of January, 2018, by Philip G. Kane, Jr., Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

Notary Public's Signature \_\_\_\_\_  
Notary Public, State of Connecticut  
County of Hartford  
My commission expires: \_\_\_\_\_

SUSAN P. McNALLY  
Notary Public, State of Connecticut  
My Commission Expires March 31, 2020

## EXHIBIT A

### RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

MAILED TO: 1/30/2018  
SULLIVAN, MOUNTJOY, STAINBACK & MILLER, P.S.C.  
100 ST. ANN STREET  
OWENSBORO, KY 42303



OHSUSA 766017439

A-1



**2018000949**

HENDERSON CO, KY FEE \$49.00

PRESENTED / LODGED: 01-29-2018 12:39:44 PM

RECORDED: 01-29-2018

RENESA ABNER  
CLERK

BY: JULIA BOWERS  
DEPUTY CLERK

**BK: MT 1256**

**PG: 723-737**

*Note: See Amendment No. 1 to the Senior Secured Credit Agreement, dated September 19, 2017, for revised terms and conditions.*

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SENIOR SECURED CREDIT AGREEMENT

dated as of March 5, 2015

among

BIG RIVERS ELECTRIC CORPORATION,  
as the Borrower,

The LENDERS Party Hereto,

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION  
as Administrative Agent, Lead Arranger, Issuing Lender  
and Swingline Lender

and

REGIONS BANK,  
as Syndication Agent

\_\_\_\_\_  
\$130,000,000  
\_\_\_\_\_

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EXHIBIT J-4	-	Form of U.S. Tax Certificate (For Foreign Lenders that <u>are</u> Partnerships for U.S. Federal Income Tax Purposes)

SENIOR SECURED CREDIT AGREEMENT (this “Agreement”) dated as of March 5, 2015, among BIG RIVERS ELECTRIC CORPORATION, the LENDERS party hereto, REGIONS BANK, as Syndication Agent, and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, as Lead Arranger, Issuing Lender, Swingline Lender and Administrative Agent.

The Borrower (as hereinafter defined) has requested that the Lenders (as hereinafter defined), the Swingline Lender (as hereinafter defined) and the Issuing Lender (as hereinafter defined) make loans and extend credit to it in an aggregate principal amount not exceeding \$130,000,000 at any one time outstanding. The Lenders, the Swingline Lender and the Issuing Lender are prepared to extend such credit upon the terms and conditions hereof, and, accordingly, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“ABR Applicable Margin” means, for any day, the percentage rate per annum set forth below opposite the applicable Secured Credit Rating of the Borrower then in effect, in the column labeled “ABR Applicable Margin” below:

Level	S&P Credit Rating	Moody’s Credit Rating	Fitch Credit Rating	ABR Applicable Margin
I	≥ BBB+	≥ Baa1	≥ BBB+	0.100%
II	BBB	Baa2	BBB	0.300%
III	BBB-	Baa3	BBB-	0.500%
IV	BB+	Ba1	BB+	0.650%
V	BB	Ba2	BB	1.125%
VI	≤ BB-	≤ Ba3	≤ BB-	1.300%

The ABR Applicable Margin shall, in each case, be determined and adjusted (i) any time after the date of any credit rating agency report setting forth a new and decreased credit rating for the Borrower, (ii) with respect to any credit rating agency report setting forth a new and increased credit rating for the Borrower, no later than five (5) days after written notice from the Borrower to the Administrative Agent requesting the Administrative Agent to decrease the ABR Applicable Margin and (iii) on the date that the Borrower ceases to have any credit rating from any of S&P, Moody’s or Fitch (each such adjustment date, an “ABR Interest Determination”).

Date”). Such ABR Applicable Margin shall be effective from such ABR Interest Determination Date until the next such ABR Interest Determination Date.

If the Borrower’s Secured Credit Ratings fall within different levels in the above table, the ABR Applicable Margin shall be determined as follows: (a) if the Borrower is rated by two such rating agencies, the lower rating level shall be the applicable level and (b) if the Borrower is rated by three such rating agencies, the level of two of the same level of Secured Credit Ratings shall be the applicable level or, if each of the Secured Credit Ratings is in a different level, the level which is the middle of the three Secured Credit Ratings shall be the applicable level.

If the Borrower does not have a Secured Credit Rating from at least two of the rating agencies set forth above on any ABR Interest Determination Date, the ABR Applicable Margin shall be pricing level VI.

References to ratings in the table above are references to rating categories as determined by the rating agencies as of the Effective Date and in the event of adoption of any new or changed rating system by any such rating agency, each of the ratings from the rating agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date.

The applicable pricing level for the ABR Applicable Margin, as of the Effective Date, is pricing level V.

“Accounting Requirements” shall have the meaning set forth in the Indenture.

“Adjusted LIBO Rate” means, (a) for the Interest Period for any LIBO Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate for such Interest Period and (b) for the calculation of Alternate Base Rate on any day, an interest rate per annum equal to (i) the LIBO Rate for such day multiplied by (ii) the Statutory Reserve Rate for such Interest Period.

“Administrative Agent” means CFC, in its capacity as administrative agent for the Lenders hereunder, and any successor in such capacity.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Parties” has the meaning set forth in Section 9.01(d)(ii).

“Agreement” shall have the meaning ascribed thereto in the preamble.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate for such day plus 0.50% and (c) the Adjusted LIBO Rate for a one-month interest period for such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate for a one-month interest period shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate for a one-month interest period, as the case may be.

“Anti-Terrorism Laws” means any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery and any regulation, order or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment, provided that so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Commitment shall be disregarded in calculating each other Lender’s Applicable Percentage. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, after giving effect to any assignments and to any Lender’s status as a Defaulting Lender at the time of determination.

“Approved Environmental Plan” means the projects in Borrower’s current environmental compliance plan approved by the KPSC for which Borrower is seeking long-term debt financing in an application submitted to the RUS on October 10, 2014.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means, CFC, as Lead Arranger hereunder.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Authorizations” means the governmental and third party consents, approvals, authorizations, actions, notices and filings necessary in connection with the conduct of the Borrower’s business and the consummation of the Transactions.

“Availability Period” means the period from and including the Effective Date to, but excluding, the earlier of the Maturity Date and the date of termination of the Commitments prior to the Maturity Date pursuant to Section 2.07(b), Section 2.09(b), Article VII or otherwise.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the



reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Big Rivers Electric Corporation, a non-profit, generation and transmission cooperative corporation duly organized under the laws of the Commonwealth of Kentucky.

“Borrowing” means (a) all Revolving ABR Loans made, converted or continued on the same date, (b) all LIBO Loans that have the same Interest Period or (c) a Swingline Loan.

“Borrowing Request” means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03, substantially in the form of Exhibit E hereto.

“Business Day” means any day (a) that the office of the Administrative Agent is not closed, (b) that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed and (c) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a continuation or conversion of or into, or the Interest Period for, a LIBO Loan, or to a notice by the Borrower with respect to any such borrowing, payment, prepayment, continuation, conversion, or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP (as in effect as of the date hereof) and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP (as in effect as of the date hereof). “Capital Lease Obligations” shall not include obligations included on such Person’s consolidated financial statements because of (a) consolidation of another Person, including a Subsidiary, with such Person pursuant to GAAP and for which such Person is not legally obligated or (b) solely because of FIN 46.

“Cash Collateral Account” has the meaning set forth in Section 2.04(k).

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the Issuing Lender or Lenders, as collateral for LC Exposure or obligations of Lenders to fund participations in respect of LC Exposure, cash or

deposit account balances or, if the Administrative Agent and the Issuing Lender shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“CFC” means National Rural Utilities Cooperative Finance Corporation.

“CFC Capital Term Certificates” means capital term certificates, or book entry form of account, evidencing the Borrower’s (i) required purchase of equity in CFC in connection with any existing or future credit facilities provided or to be provided by CFC or (ii) other investments in CFC.

“Change in Control” means, with respect to the Borrower, failure by the Borrower or its successor in interest, to be engaged in the furnishing of electric utility services to its Members and to be organized as a cooperative, nonprofit corporation, public utility district, municipality, or other public governmental body.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are Revolving Loans or Swingline Loans.

“CoBank” means CoBank, ACB, a federally chartered instrumentality of the United States.

“CoBank Equities” means equity that the Borrower holds in CoBank in such amounts and at such times as CoBank may require in accordance with CoBank’s bylaws and policies (as each may be amended from time to time). “Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means the “Trust Estate” under and as defined in the Indenture and “Collateral” or similar term under and as defined in any other applicable Security Document.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Credit Exposure hereunder, as such commitment may be (a) reduced from time to time

pursuant to Section 2.07 or Section 2.09(b) and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on Schedule I, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The initial aggregate amount of the Lenders' Commitments is \$130,000,000.

"Communication" has the meaning set forth in Section 9.01(d).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Credit Exposure" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and its LC Exposure and Swingline Exposure at such time.

"Credit Extension" has the meaning set forth in Section 4.02.

"Debt Incurrence" means the incurrence by the Borrower after the Effective Date of any Indebtedness from the RUS to finance the Borrower for any of the purposes set forth in Section 5.10 or to refinance any of the Loans made hereunder.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulting Lender" means, subject to Section 2.19(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's

determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.19(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

“Direct Serve Contracts” means wholesale electric service contracts (together with material amendments or supplements thereto and all successor or replacement contracts and agreements thereto and thereof) with a Member to provide wholesale electric service under Borrower’s large industrial tariff schedule LIC (or any successor tariff schedule) to any retail customer other than a smelter for which the Member has an electric service contract with such customer.

“Distribution” has the meaning set forth in Section 6.13.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 9.04(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 9.04(b)(iii)).

“Environmental Claim” means any written notice of violation, claim, demand, causes of action, assessments, complaints, directives, citations, legal proceedings, orders, notices of potential responsibility, in each case asserting directly against the Borrower losses, damages (including, without limitation, diminution in value), liabilities, sanctions, costs and expenses (including, without limitation, interest, penalties and attorneys’ and experts’ fees and

disbursements) (collectively, a “Claim”) pursuant to Environmental Laws, including but not limited to, Claims based on, arising out of or otherwise relating to: (i) the Remediation, presence or Release of, or exposure to, Hazardous Materials or other environmental conditions at, on, under, above, from, or about any Real Property or any real properties formerly owned, leased or operated by the Borrower or any of its predecessors or Affiliates; (ii) the off-site Release, treatment, transportation, storage or disposal of Hazardous Materials originating from the Borrower’s assets, properties or business; or (iii) any violations of Environmental Laws by the Borrower prior to the Effective Date, including reasonable expenditures necessary to cause the Borrower to be in compliance with or resolve violations of Environmental Laws. “Environmental Claim” shall not include the promulgation, issuance, adoption or effectiveness, as such, of any Environmental Laws or KPSC orders approving the Borrower’s then-effective environmental plan.

“Environmental Laws” means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, judicial rulings, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, now or hereafter in effect, relating in any way to the environment, preservation or reclamation of natural resources, the management, or Release of any Hazardous Material or noise control, or the protection of human health, safety, natural resources, animal health or welfare, or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. (“CERCLA”).

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of Remediation, fines, penalties or indemnities), of the Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” has the meaning set forth in Section 3.07(a).

“Equity” means, for any period, the aggregate of the Borrower’s consolidated (where applicable) total Members’ equity and patrons’ equity computed pursuant to GAAP.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower or a Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) the occurrence of any “reportable event” with respect to a Plan, as defined in Section 4043 of ERISA or the regulations issued thereunder (other than an event for which the 30-day notice period is waived); (b) the determination that any Plan is, or is reasonably expected to be, an “at-risk” plan within the meaning of Section 430 of the Code or

Section 303 of ERISA; (c) the failure by the Borrower or any ERISA Affiliate to make a required contribution to any Plan that results in, or would be reasonably expected to result in, the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA; (d) the failure by the Borrower or an ERISA Affiliate to satisfy the minimum funding standard with respect to any Plan under Section 412 of the Code or Section 302 of ERISA; (e) the Borrower or an ERISA Affiliate filing an application for a waiver of the minimum funding standard with respect to any Plan pursuant to Section 412(d) of the Code or Section 303(d) of ERISA; (f) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4008 of ERISA; (g) the receipt by the Borrower or any ERISA Affiliate from the PBGC of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan; (h) the incurrence by the Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; or (i) the receipt by the Borrower or any ERISA Affiliate of any notice concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.17(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.15, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.15(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Facility” means, the Amended and Restated Revolving Line of Credit Agreement, dated as of August 19, 2013, between the Borrower and CFC.

“Existing Letters of Credit” means, the following letters of credit issued under the Existing Credit Facility:

Issue Date	Issuing Lender	Beneficiary	Amount	Expiration Date
7/16/2009 (amended 5/13/2014)	CFC	Commonwealth of Kentucky	\$1,039,925.00	7/15/2015 (subject to annual renewal)

7/16/2009	CFC	Commonwealth of Kentucky	\$2,504,400.00	7/15/2015 (subject to annual renewal)
9/25/2009 (amended 2/21/2013)	CFC	Midwest Independent Transmission System Operator, Inc.	\$5,000,000.00	2/28/2015 (subject to annual renewal)
6/3/2013 (amended 12/31/2013)	CFC	NJR Service Corporation	\$50,000.00	12/31/2014

“Existing L/C Issuer” means CFC, in its capacity as issuer of the Existing Letters of Credit.

“Facility Fee Percentage” means, for any day, the rate per annum set forth below opposite the applicable Secured Credit Rating of the Borrower then in effect, in the column labeled “Facility Fee Percentage” below:

Level	S&P Credit Rating	Moody’s Credit Rating	Fitch Credit Rating	Facility Fee Percentage
I	≥ BBB+	≥ Baa1	≥ BBB+	0.175%
II	BBB	Baa2	BBB	0.225%
III	BBB-	Baa3	BBB-	0.275%
IV	BB+	Ba1	BB+	0.350%
V	BB	Ba2	BB	0.375%
VI	≤ BB-	≤ Ba3	≤ BB-	0.500%

The Facility Fee Percentage shall, in each case, be determined and adjusted (i) any time after the date of any credit rating agency report setting forth a new and decreased credit rating for the Borrower, (ii) with respect to any credit rating agency report setting forth a new and increased credit rating for the Borrower, no later than five (5) days after written notice from the Borrower to the Administrative Agent requesting the Administrative Agent to decrease the Facility Fee Percentage and (iii) on the date that the Borrower ceases to have any credit rating from any of S&P, Moody’s or Fitch (each such adjustment date, a “Facility Fee Determination Date”). Such Facility Fee Percentage shall be effective from such Facility Fee Determination Date until the next such Facility Fee Determination Date.

If the Borrower’s Secured Credit Ratings fall within different levels in the above table, the Facility Fee Percentage shall be determined as follows: (a) if the Borrower is rated by two such rating agencies, the lower rating level shall be the applicable level and (b) if the Borrower is rated by three such rating agencies, the level of two of the same level of Secured Credit Ratings shall be the applicable level or, if each of the Secured Credit Ratings is in a different level, the level which is the middle rating of the three Secured Credit Ratings shall be the applicable level.



If the Borrower does not have a Secured Credit Rating from at least two of the rating agencies set forth above on any Facility Fee Determination Date, the Facility Fee Percentage shall be pricing level VI.

References to ratings in the table above are references to rating categories as determined by the rating agencies as of the Effective Date and in the event of adoption of any new or changed rating system by any such rating agency, each of the ratings from the rating agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date.

The applicable pricing level for the Facility Fee Percentage, as of the Effective Date, is pricing level V.

“Facility Fees” means the fees paid by the Borrower pursuant to Section 2.10(a).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

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

“Fifth Supplemental Indenture” means the Fifth Supplemental Indenture to the Indenture, dated as of February 23, 2015, from the Borrower to the Trustee pursuant to which the Secured Promissory Notes are issued.

“FIN 46” means Financial Accounting Standards Board Interpretation No. 46(R), “Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51,” as amended, supplemented or modified from time to time and any successor or replacement interpretation.

“Fitch” means Fitch Ratings, Ltd.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Lender, such Defaulting Lender’s Applicable Percentage of the outstanding LC Exposure with respect to Letters of Credit issued by the Issuing Lender other than LC Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender’s Applicable Percentage of outstanding Swingline Loans made by the Swingline Lender other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

“Governmental Authority” means the government of the United States of America, or of any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided, however, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, and infectious or medical wastes; any mold or fungus defined by Environmental Law to be of a type reasonably expected to pose an unacceptable risk to human health; and all other substances,

materials or wastes of any nature that are listed pursuant to, or subject to regulation under, any Environmental Law.

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection or energy hedge agreement or other interest or currency exchange rate or commodity price or energy hedging arrangement.

“Henderson Municipal Power and Light Station Two” means that certain 312 megawatt coal-fired generating facility owned by the City of Henderson, Kentucky.

“Holder” has the meaning set forth in the Indenture.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations under Hedging Agreements, to the extent such obligations are required to be treated as liabilities under GAAP, and (k) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent (i) the terms of such Indebtedness provide that such Person is not liable therefor or (ii) such Indebtedness does not constitute debt under GAAP of such Person. The Indebtedness of the Borrower shall not include: (a) obligations under power, energy, transmission or fuel purchase agreements, (b) indebtedness secured by Liens constituting Permitted Exceptions (as defined in the Indenture), (c) lease obligations (other than Capital Lease Obligations), (d) obligations imposed by a Governmental Authority (other than RUS), (e) indebtedness consisting of reimbursement obligations under surety, indemnity, performance, release and appeal bonds and Guarantees thereof incurred in the ordinary course of the Borrower’s business, (f) reclamation obligations of the Borrower, (g) obligations of the Borrower in respect of trade payables incurred in the ordinary course of the Borrower’s business, (h) Guarantees of obligations not constituting Indebtedness, and (i) contracts related to Henderson Municipal Power and Light Station Two.

“Indemnified Costs” has the meaning set forth in Section 8.09(a).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitor” has the meaning set forth in Section 9.03(b).

“Indenture” means the Indenture by and between the Borrower and Trustee, dated as of July 1, 2009, as amended, supplemented or modified from time to time (including, without limitation, the Fifth Supplemental Indenture).

“Information” has the meaning set forth in Section 9.12(b).

“Interest Charges” has the meaning set forth in the Indenture as in effect as of the date hereof.

“Interest Election Request” means, a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.06, substantially in the form of Exhibit F hereto.

“Interest Payment Date” means (a) with respect to any Revolving ABR Loan, each Quarterly Date, (b) with respect to any LIBO Loan, the last day of each Interest Period therefor and, in the case of any Interest Period of more than three (3) months’ duration, each day prior to the last day of such Interest Period that occurs at three-month intervals after the first day of such Interest Period and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period” means, for any LIBO Loan or Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as specified in the applicable Borrowing Request or Interest Election Request; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Loan initially shall be the date on which such Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan, and the date of a Revolving Borrowing comprising Loans that have been converted or continued shall be the effective date of the most recent conversion or continuation of such Loans.

“Investment” means, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership, limited liability company or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person

(including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding 90 days arising in connection with sales by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement.

“IRS” means the United States Internal Revenue Service.

“Issuing Lender” means, either (a) CFC, in its capacity as the issuer of Letters of Credit hereunder and the Existing Letters of Credit or (b) any Lender chosen by the Borrower to issue Letters of Credit hereunder, but only to the extent such Lender (other than CFC) agrees in its sole discretion to be an Issuing Lender, and any successor to CFC or such Lender as provided in Section 2.04(j).

“KPSC” means the Kentucky Public Service Commission.

“Lead Arranger” means CFC, in its capacity as lead arranger in respect of the Facility.

“LC Disbursement” means a payment made by the Issuing Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“Lenders” means the Persons listed on Schedule I and any other Person that shall have become a Lender hereunder pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption or Section 2.17 or Section 2.18. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means the Existing Letters of Credit and any letter of credit issued pursuant to this Agreement.

“Letter of Credit Documents” means, with respect to any Letter of Credit, collectively, any application therefor and any other agreements, instruments, guarantees or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations, each as the same may be modified and supplemented and in effect from time to time.

“LIBO”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“LIBO Applicable Margin” means, for any day, the percentage rate per annum set forth below opposite the applicable Secured Credit Rating of the Borrower then in effect, in the column labeled “LIBO Applicable Margin” below:

Level	S&P Credit Rating	Moody’s Credit Rating	Fitch Credit Rating	LIBO Applicable Margin
I	≥ BBB+	≥ Baa1	≥ BBB+	1.100%
II	BBB	Baa2	BBB	1.300%
III	BBB-	Baa3	BBB-	1.500%
IV	BB+	Ba1	BB+	1.650%
V	BB	Ba2	BB	2.125%
VI	≤ BB-	≤ Ba3	≤ BB-	2.300%

The LIBO Applicable Margin shall, in each case, be determined and adjusted (i) any time after the date of any credit rating agency report setting forth a new and decreased credit rating for the Borrower, (ii) with respect to any credit rating agency report setting forth a new and increased credit rating for the Borrower, no later than five (5) days after written notice from the Borrower to the Administrative Agent requesting the Administrative Agent to decrease the LIBO Applicable Margin and (iii) on the date that the Borrower ceases to have any credit rating from any of S&P, Moody’s or Fitch (each such adjustment date, a “LIBO Interest Determination Date”). Such LIBO Applicable Margin shall be effective from such LIBO Interest Determination Date until the next such LIBO Interest Determination Date.

If the Borrower’s Secured Credit Ratings fall within different levels in the above table, the LIBO Applicable Margin shall be determined as follows: (a) if the Borrower is rated by two such rating agencies, the lower rating level shall be the applicable level and (b) if the Borrower is rated by three such rating agencies, the level of two of the same level of Secured Credit Ratings shall be the applicable level or, if each of the Secured Credit Ratings is in a different level, the level which is the middle rating of the three Secured Credit Ratings shall be the applicable level.

If the Borrower does not have a Secured Credit Rating from at least two of the rating agencies set forth above on any LIBO Interest Determination Date, the LIBO Applicable Margin shall be pricing level VI.

References to ratings in the table above are references to rating categories as determined by the rating agencies as of the Effective Date and in the event of adoption of any new or changed rating system by any such rating agency, each of the ratings from the rating agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as in effect on the Effective Date.

The applicable pricing level for the LIBO Applicable Margin, as of the Effective Date, is pricing level V.

“LIBO Rate” means, for the Interest Period for any LIBO Borrowing, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) as displayed on page LIBOR01 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion) for deposits in Dollars at approximately 11:00 a.m. (London, England time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period and, if any such rate is below zero, the LIBO Rate will be deemed to be zero. If for any reason such rate is not available, the LIBO Rate shall be, for any Interest Period, the rate per annum reasonably determined by the Administrative Agent as the rate of interest at which Dollar deposits in the approximate amount of the LIBO Loan comprising part of such Borrowing would be offered by major banks in the London interbank eurodollar market to other major banks in the London interbank eurodollar market at their request at or about 10:00 a.m. two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period and, if any such rate is below zero, the LIBO Rate will be deemed to be zero.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means, collectively, this Agreement, the Letter of Credit Documents, the Security Documents, the Promissory Notes, each fee letter executed in connection with Section 2.10(e) and (f) hereof and all other agreements, notices, certificates and other instruments referred to herein or executed or delivered in connection with this Agreement or the Letter of Credit Documents.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement, each of which will be secured under and pursuant to the Indenture.

“Margin Stock” means “margin stock” within the meaning of Regulations T, U and X of the Board.

“Margins for Interest” has the meaning set forth in the Indenture as in effect as of the date hereof.

“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.

“Material Adverse Effect” means a material adverse effect on (a) the operations, business, assets, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower, (b) the ability of the Borrower to repay the Loans or perform any of its other



obligations under this Agreement or any other Loan Document, or (c) the validity or enforceability of this Agreement or any of the Loan Documents or the rights or benefits available to the Lenders under this Agreement or any of the other Loan Documents.

“Material Direct Serve Contracts” means any Direct Serve Contract to any customer with a contract load of 25 megawatts or greater.

“Material Indebtedness” means, collectively, (a) any Indebtedness secured by the Indenture and (b) any Indebtedness of the Borrower, in an aggregate principal amount equal to or exceeding \$15,000,000.

“Maturity Date” means the date that is three (3) years after the Effective Date; provided that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

“Maximum Rate” has the meaning assigned to such term in Section 9.16.

“Member” means each holder of a membership interest in the Borrower.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to the Fronting Exposure of the Issuing Lender with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the Issuing Lender in their sole discretion acting reasonably.

“Moody’s” means Moody’s Investors Service, Inc. or any successor or assignee of the business of such company in the business of rating securities and loans.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA which (i) the Borrower or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, and (ii) covers any employee or former employee of the Borrower or any ERISA Affiliate and with respect to which Borrower or any ERISA Affiliate has or reasonably could be expected to have a liability.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Lenders in accordance with the terms of Section 9.02 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Noticing Lender” has the meaning set forth in Section 2.17(c).

“Obligations” has the meaning set forth in the Indenture.

“OFAC” means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.17(b)).

“Participant” has the meaning specified in Section 9.04(e).

“Participant Register” has the meaning specified in Section 9.04(e).

“Patriot Act” has the meaning assigned to such term in Section 3.18.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, which (i) the Borrower or any ERISA Affiliate maintains, administers, contributes to or is required to contribute to, and (ii) covers any employee or former employee of the Borrower or any ERISA Affiliate and with respect to which Borrower or any ERISA Affiliate has or reasonably could be expected to have a liability.

“Platform” has the meaning set forth in Section 9.01(d).

“Prime Rate” means the rate of interest per annum published from time to time as the “Prime Rate” by the Eastern Edition of The Wall Street Journal, or, if the Eastern Edition of The Wall Street Journal ceases publishing a “Prime Rate”, any successor publication selected by the Administrative Agent in its reasonable discretion; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. The “Prime Rate” published by the Eastern Edition of The Wall Street Journal or any such successor publication is a reference rate and does not necessarily represent the lowest or best rate charged by financial institutions to their customers. The Lenders may make commercial loans or other loans at rates of interest at, above or below the “Prime Rate” published by the Eastern Edition of The Wall Street Journal or any such successor publication.

“Purchase Money Indebtedness” means Indebtedness:

(a) consisting of the deferred purchase price of an asset, conditional sale obligations, obligations under any title retention agreement and other purchase money obligations, in each case where the maturity of such Indebtedness does not exceed the anticipated useful life of the asset being financed, and in each case where such Indebtedness is secured by a Lien on the Borrower's property, and

(b) incurred to finance the acquisition or construction by the Borrower of such asset, including additions and improvements.

"Quarterly Dates" means the last Business Day of each March, June, September and December in each year, the first of which shall be the first such day after the date hereof.

"Real Property" has the meaning set forth in Section 3.07(c).

"Recipient" means (a) the Administrative Agent, (b) any Lender and (c) the Issuing Lender, as applicable.

"Register" has the meaning set forth in Section 9.04(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Release" means any release, threatened release, spill, seepage, escape, emission, leaking, pumping, pouring, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Materials into the indoor or outdoor environment, including the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata.

"Remediation" means any investigation, sampling, analysis, monitoring, abatement, removal, remediation, clean-up, management, treatment or disposal of Hazardous Materials related to the presence of a Release.

"Removal Effective Date" has the meaning set forth in Section 8.06(b).

"Required Lenders" means, at any time, Lenders having Credit Exposures and unused Commitments representing, in the aggregate, more than 50% of the sum of the total Credit Exposures and the unused Commitments at such time. The Credit Exposure and unused Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Resignation Effective Date" has the meaning set forth in Section 8.06(a).

"Responsible Officer" means the (i) Chief Executive Officer, (ii) Chief Financial Officer or (iii) Vice President of Systems Operations of the Borrower (or Persons holding equivalent positions at the Borrower).

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of LIBO Loans, having the same Interest Period, made by each of the Lenders pursuant to Section 2.01.

“Revolving Loans”, means the Loans made pursuant to Section 2.01.

“RUS” means Rural Utilities Service, an agency of the United States Department of Agriculture, or any other agency or governmental body succeeding to the functions thereof.

“RUS Loan” has the meaning assigned to such term in Section 4.01(a)(v).

“RUS Regulations” means regulations of general applicability published by RUS from time to time as they exist on the date of applicability thereof, and shall also include any regulations of other federal entities which RUS is required by law to implement.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business (and a division and subsidiary of McGraw Hill Companies, Inc.), or any successor or assignee of the business of such division in the business of rating securities.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government or (d) a Person resident in or determined to be resident in a country, in each case that is subject to a broad embargo administered and enforced by OFAC like those that OFAC presently maintains against Cuba, Iran, North Korea, Sudan or Syria.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“Sanctions” means (a) economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (i) the U.S. government including those administered by OFAC or the U.S. Department of State, (ii) the European Union or (iii) Her Majesty's Treasury of the United Kingdom; and (b) economic or financial sanctions imposed, administered or enforced from time to time by the U.S. State Department, the U.S. Department of Commerce or the U.S. Department of the Treasury.

“Secured Credit Rating” means, for any Person, the long-term, senior, secured, non-credit enhanced debt ratings assigned to such Person by Moody’s, S&P and Fitch.

“Secured Promissory Note” has the meaning assigned to such term in Section 2.08(f).

“Security Documents” means the Indenture (including, without limitation, the Fifth Supplemental Indenture) and other agreements, instruments and documents executed and delivered pursuant to this Agreement, the Indenture or otherwise, to secure, or otherwise provide for collateral security for, any of the obligations of the Borrower under the this Agreement, the Secured Promissory Notes and the other applicable Loan Documents.

“Solvent” means, with respect to any Person on a particular date, that (i) the fair value of the total assets of such Person is greater than the total amount of the liabilities, including

contingent liabilities, of such Person, (ii) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, and (iv) such Person is not engaged in business, and is not about to engage in business, for which such Person's property would constitute unreasonably small capital for a generation and transmission cooperative. For the purposes of this definition, in computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed as the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Statutory Reserve Rate" means, for the Interest Period for any LIBO Borrowing, a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which are consolidated with those of the parent in the parent's consolidated financial statements or would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, "Subsidiary" means a Subsidiary of the Borrower. Subsidiaries shall not include any Person if the accounts of such Person would be consolidated with those of the Borrower in the Borrower's consolidated financial statements, if such financial statements were prepared in accordance with GAAP, solely because of FIN 46.

"Substantially All" means, in reference to the Borrower's assets, 75% or more of the Borrower's assets, on a net book value (as determined in accordance with GAAP) basis.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. Unless and until the Swingline Lender sends the notice described in Section 2.18(c), the Swingline Exposure of the Swingline Lender shall be

100%. The Swingline Exposure of any Lender that participates in a Swingline Loan at any time shall be its Applicable Percentage of the total aggregate outstanding amount of Swingline Loans at such time as to which the Swingline Lender has delivered the notice described in Section 2.18(c).

“Swingline Lender” means CFC, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.18.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing and repayment of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Trustee” means the “Trustee” as defined in the Indenture.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans constituting such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 2.15(g)(ii)(B)(3).

“Wholesale Power Contracts” means, collectively, (a) the contracts and agreements (together with the amendments and supplements thereto) identified in Schedule IV and all successor or replacement contracts and agreements thereto or thereof and (b) each other contract and agreement from time to time entered into between the Borrower and a Member providing for the sale of electric power and energy by the Borrower to such Member, excluding the Direct Serve Contracts.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withholding Agent” means the Borrower and the Administrative Agent.

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise or unless noted elsewhere herein that an

agreement, instrument or other document (or any defined term therein) is to be construed only as the same is in effect on or as of the date of this Agreement or some other specified date (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP applied on a consistent basis, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. All calculations made for the purposes of determining compliance with the Loan Documents shall (except as otherwise expressly provided) be made by application of GAAP applied on a basis consistent with the most recent annual or quarterly financial reports to be delivered under the Loan Documents; provided, however, if (a) the Borrower shall object to determining such compliance on such basis at the time of delivery of such financial statements or other documents due to any change in GAAP or the rules promulgated with respect thereto or (b) the Administrative Agent or a Lender shall so object in writing within thirty (30) days after delivery of such financial statement, then such calculations shall be made on a basis consistent with the most recent financial statements delivered by the Borrower as to which no such objection shall have been made. For purposes of calculating the covenants set forth in Section 6.07, the profits or losses of any Person shall be excluded if the accounts of such Person would be consolidated with those of the Borrower in the Borrower's consolidated financial statements, if such financial statements were prepared in accordance with GAAP, solely because of FIN 46

Section 1.04 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "Revolving Loan"), by Type (*e.g.*, an "ABR Loan") or by Class and Type (*e.g.*, a "Revolving ABR Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Revolving Borrowing"), by Type (*e.g.*, an "ABR Borrowing") or by Class and Type (*e.g.*, a "Revolving ABR Borrowing").



## ARTICLE II

### THE CREDITS

Section 2.01 The Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to the Borrower on a revolving credit basis from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Credit Exposure exceeding such Lender's Commitment or (b) the total Credit Exposures exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow Revolving Loans.

#### Section 2.02 Loans and Borrowings.

(a) Obligations of Lenders. Each Revolving Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Type of Loans. Subject to Section 2.12, each Revolving Borrowing shall be constituted entirely of ABR Loans or of LIBO Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any LIBO Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Minimum Amounts; Limitation on Number of Borrowings. Each Revolving Borrowing shall be in an aggregate amount of \$1,000,000 or a larger multiple of \$500,000; provided that a Revolving ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(f). Each Swingline Loan shall be in an amount equal to \$1,000,000 or a larger multiple of \$500,000. Borrowings of more than one Class and Type may be outstanding at the same time; provided that there shall not at any time be more than a total of fifteen (15) LIBO Borrowings outstanding.

(d) Limitations on Interest Periods. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request (or to elect to convert to or continue as a LIBO Borrowing) any Borrowing if the Interest Period requested therefor would end after the Maturity Date.

#### Section 2.03 Requests for Revolving Borrowings.

(a) Notice by the Borrower. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone, hand delivery, facsimile or by electronic communication (i) in the case of a LIBO Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (ii) in the

case of a Revolving ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of the proposed Borrowing; provided that any such notice of a Revolving ABR Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.04(f) may be given not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, facsimile or electronic communication to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the Borrower, substantially in the form of Exhibit E.

(b) Content of Borrowing Requests. Each telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day within the Availability Period;
- (iii) whether such Borrowing is to be an ABR Borrowing or a LIBO Borrowing;
- (iv) in the case of a LIBO Borrowing, the Interest Period therefor, which shall be a period contemplated by the definition of the term "Interest Period" and permitted under Section 2.02(d); and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which disbursement shall comply with the requirements of Section 2.04.

(c) Notice by the Administrative Agent to the Lenders. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

(d) Failure to Elect. If no election as to the Type of a Revolving Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested LIBO Borrowing, then the requested Borrowing shall be made instead as an ABR Borrowing.

#### Section 2.04 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, in addition to the Revolving Loans, the Borrower may request the Issuing Lender to issue, subject to the terms of this Section 2.04, and the Issuing Lender shall issue, at any time and from time to time during the Availability Period, Letters of Credit for its own account in such form as is acceptable to the Issuing Lender in its reasonable determination and in an aggregate amount (whether drawn upon or not) that will not result in (i) the aggregate LC Exposure of the Issuing Lender exceeding \$50,000,000 (determined for these purposes without giving effect to the participations therein of the Lenders pursuant to paragraph (e) of this Section) or (ii) the total Credit Exposures exceeding

the total Commitments. Letters of Credit issued hereunder shall constitute utilization of the Commitments in an amount equal to the LC Exposure relating to such Letters of Credit.

(b) Notice of Issuance, Amendment, Renewal or Extension. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Lender) to the Issuing Lender and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (d) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Lender, the Borrower also shall submit a letter of credit application on the Issuing Lender's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Issuing Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Limitations on Amounts. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the aggregate LC Exposure of the Issuing Lender (determined for these purposes without giving effect to the participations therein of the Lenders pursuant to paragraph (e) of this Section) shall not exceed \$50,000,000 and (ii) the total Credit Exposures shall not exceed the total Commitments.

(d) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date twelve months after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, twelve months after the then-current expiration date of such Letter of Credit, so long as such renewal or extension occurs within three months of such then-current expiration date), unless the Issuing Lender has, at its sole discretion, approved a later expiration date, and (ii) the date that is five Business Days prior to the Maturity Date.

(e) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) by the Issuing Lender (and on the Effective Date, with respect to the Existing Letters of Credit), and without any further action on the part of the Issuing Lender or the Lenders, the Issuing Lender hereby grants to each Lender, and each Lender hereby acquires from the Issuing Lender, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension

of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Lender promptly upon the request of the Issuing Lender at any time from the time of such LC Disbursement until such LC Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Issuing Lender the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to the next following paragraph, the Administrative Agent shall distribute such payment to the Issuing Lender or, to the extent that the Lenders have made payments pursuant to this paragraph to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse the Issuing Lender for any LC Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Reimbursement. If the Issuing Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse the Issuing Lender in respect of such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 12:00 noon, New York City time, on (i) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is received prior to 10:00 a.m., New York City time, or (ii) the Business Day following the day that the Borrower receives such notice, if such notice is not received prior to such time; provided that, if such LC Disbursement is not less than \$10,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a Revolving ABR Borrowing or, in accordance with Section 2.18, a Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving ABR Borrowing or Swingline Loan.

If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof.

(g) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (f) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Lender under a Letter of Credit against presentation of a draft or other document that does not comply

strictly with the terms of such Letter of Credit, and (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Neither the Administrative Agent, the Lenders nor the Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the Issuing Lender or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Lender; provided that the foregoing shall not be construed to excuse the Issuing Lender from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Lender's gross negligence or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that:

(i) the Issuing Lender may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit; and

(ii) the Issuing Lender shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit.

This Section 2.04(g) shall establish the standard of care to be exercised by the Issuing Lender when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable law, any standard of care inconsistent with the foregoing).

(h) Disbursement Procedures. The Issuing Lender shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Lender shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile) of such demand for payment and whether the Issuing Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Issuing Lender and the Lenders with respect to any such LC Disbursement.

(i) Interim Interest. If the Issuing Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and

including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to Revolving ABR Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (f) of this Section, then Section 2.11(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Lender, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Lender shall be for the account of such Lender to the extent of such payment.

(j) Replacement of the Issuing Lender. The Issuing Lender may be replaced at any time by written agreement between the Borrower, the Administrative Agent and the successor Issuing Lender and following notice to the Administrative Agent. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Lender. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Lender pursuant to Section 2.10(b). From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of the replaced Issuing Lender under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(k) Cash Collateralization. To the extent not prohibited by the terms of Borrower’s Indenture or any agreement with RUS pursuant to which the Borrower participates in an RUS loan or guarantee program and to the extent the consent of RUS is not required, if either (i) an Event of Default shall occur and be continuing and the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing more than 50% of the total LC Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, or (ii) the Borrower shall be required to provide cover for LC Exposure pursuant to Section 2.09(b), then, to the extent consistent with any agreement to which the Borrower is party on the date hereof, the Borrower shall immediately deposit into a collateral account that is either (A) established and maintained on the books and records of the Administrative Agent or (B) designated by the Administrative Agent, which account may be a “securities account” (as defined in Section 8-501 of the Uniform Commercial Code as in effect from time to time in the State of New York), in the name of the Administrative Agent and for the benefit of the Lenders (such account a “Cash Collateral Account”), Cash Collateral in an amount equal to, in the case of an Event of Default, the LC Exposure as of such date plus any accrued and unpaid interest thereon and, in the case of cover pursuant to Section 2.09(b), the amount required under Section 2.09(b); provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in paragraph (i) or (j) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the LC Exposure under this Agreement, and for this purpose the Borrower hereby grants a security

interest to the Administrative Agent for the benefit of the Lenders in such Cash Collateral Account and in any financial assets (as defined in the Uniform Commercial Code as in effect from time to time in the State of New York) or other property held therein. If at any time the Administrative Agent determines that such Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than the amount required by this Section 2.04(k), the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

The Administrative Agent shall invest the funds from time to time held by it in the Cash Collateral Account described in the paragraph above in such overnight U.S. treasury or similar short-term instruments as are selected by the Borrower and approved by the Administrative Agent, and shall maintain records adequate to determine the interest from time to time earned on such funds. The Administrative Agent shall have no responsibility for any loss on any investments made by it with respect to the funds in such Cash Collateral Account. Interest and profits on investments will be credited to and retained in the Cash Collateral Account.

(l) Existing Letters of Credit. The Borrower, the Administrative Agent, the Issuing Lenders and the Lenders hereby acknowledge that on and as of the Effective Date the Existing Letters of Credit irrevocably shall be deemed to be Letters of Credit issued under this Agreement and all the provisions of this Agreement shall apply to the Existing Letters of Credit as being Letters of Credit issued under this Agreement by the Existing L/C Issuer, without novation of any of the obligations of the Borrower to the Existing L/C Issuer in respect of said Existing Letters of Credit.

#### Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.18. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, on the date of receipt, in like funds, to an account designated by the Borrower in the applicable Borrowing Request; provided that Revolving ABR Borrowings made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(f) shall be remitted by the Administrative Agent to the Issuing Lender.

(b) Presumption by the Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05(a) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such



amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Prime Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Notwithstanding the foregoing, the Administrative Agent has no obligation to make any Loan funds available to the Borrower unless the Administrative Agent has received such funds from the Lenders in accordance with the terms hereof. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

#### Section 2.06 Interest Elections.

(a) Elections by the Borrower for Revolving Borrowings. The Loans constituting each Revolving Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a LIBO Borrowing, shall have the Interest Period specified in such Borrowing Request. Thereafter and subject to Section 2.01 and Section 2.02, the Borrower may elect to convert such Borrowing to a Borrowing of a different Type or to continue such Borrowing as a Borrowing of the same Type and, in the case of a LIBO Borrowing, may elect the Interest Period therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans constituting such Borrowing, and the Loans constituting each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) Notice of Elections. To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone, hand delivery, facsimile or by electronic communication by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery, facsimile or electronic communication to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower, substantially in the form of Exhibit F.

(c) Content of Interest Election Requests. Each written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be

specified pursuant to clauses (iii) and (iv) of this paragraph shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a LIBO Borrowing; and

(iv) if the resulting Borrowing is a LIBO Borrowing, the Interest Period therefor after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period" and permitted under Section 2.02(d).

(d) Notice by the Administrative Agent to the Lenders. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Failure to Elect; Events of Default. If the Borrower fails to deliver a timely and complete Interest Election Request with respect to a LIBO Borrowing prior to the end of the Interest Period therefor, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Revolving ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a LIBO Borrowing and (ii) unless repaid, each LIBO Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period therefor.

#### Section 2.07 Termination and Reduction of the Commitments.

(a) Scheduled Termination. Unless previously terminated, the Commitments shall terminate at the end of the Availability Period.

(b) Voluntary Termination or Reduction. The Borrower may at any time terminate, or from time to time permanently terminate or permanently reduce the Commitments; provided that (i) each termination or reduction of the Commitments pursuant to this Section shall be in an amount that is \$1,000,000 or a larger multiple of \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.09, the total Credit Exposures would exceed the total Commitments of all Lenders in effect after giving effect to such termination or reduction.

(c) Notice of Voluntary Termination or Reduction. The Borrower shall notify the Administrative Agent of any election to permanently terminate or reduce the Commitments under paragraph (b) of this Section at least five (5) calendar days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower

may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(d) Mandatory Reduction. The Commitments shall be automatically and permanently reduced in the manner, and under the circumstances contemplated by, Section 2.09(b). In addition, upon the Borrower's receipt of the proceeds of any Debt Incurrence, to the extent such proceeds reimburse the Borrower for any costs paid in connection with the Approved Environmental Plan other than costs paid with Loans hereunder, the Commitments shall be automatically and permanently reduced, on a pro rata basis, by the amount so reimbursed.

(e) Effect of Termination or Reduction. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

#### Section 2.08 Repayment of Loans; Evidence of Debt.

(a) Repayment. The Borrower hereby unconditionally promises to pay the Loan as follows:

(i) to the Administrative Agent for the account of the Lenders the outstanding principal amount of the Revolving Loans on the Maturity Date; and

(ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the date that is the fifth (5<sup>th</sup>) Business Day after the date such Swingline Loan is made.

Unless otherwise specified herein or in any other Loan Document, all obligations under the Loan Documents shall be due and payable on the Maturity Date.

(b) Manner of Payment. Prior to any repayment of any Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be paid and shall notify the Administrative Agent by telephone (confirmed by facsimile or electronic communication) or electronic communication of such selection (i) in the case of repayment of a LIBO Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of such repayment, (ii) in the case of repayment of a Revolving ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of such repayment or (iii) in the case of repayment of a Swingline Loan, not later than 12:00 noon, New York City time, on the date of such repayment. If the Borrower fails to make a timely selection of the Borrowing or Borrowings to be repaid, such payment shall be applied, first, to pay any outstanding ABR Borrowings and, second, to other Borrowings in the order of the remaining duration of their respective Interest Periods (the Borrowing with the shortest remaining Interest Period to be repaid first). Each payment of a Revolving Borrowing shall be applied ratably to the Loans included in such Borrowing.

(c) Maintenance of Records by Lenders. Each Lender shall maintain in accordance with its usual practice records evidencing the indebtedness of the Borrower to such Lender

resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) Maintenance of Records by the Administrative Agent. The Administrative Agent shall maintain records in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and each Interest Period therefor, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) Effect of Entries. The entries made in the records maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Secured Promissory Notes. Each Lender (including the Swingline Lender) shall receive from the Borrower a secured promissory note evidencing its Loans, which secured promissory notes shall be issued under the Indenture, as amended and supplemented, including by the Fifth Supplemental Indenture (each, a "Secured Promissory Note"). The Borrower shall prepare, execute (and shall cause the Trustee to authenticate) and deliver to such Lender such Secured Promissory Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns), substantially in the form attached to the Fifth Supplemental Indenture. The Loan evidenced by such Secured Promissory Note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more Secured Promissory Notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

## Section 2.09 Prepayment of Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Agreement, including, without limitation, payment of any breakage costs pursuant to Section 2.14.

### (b) Mandatory Prepayments.

(i) Change in Control. Upon the occurrence of a Change in Control of the Borrower, the Borrower shall prepay the entire principal of and interest on the Loans (and procure the termination of any outstanding Letters of Credit and, pending such termination, provide cover for the entire amount of LC Exposure as specified in Section 2.04(k) (subject to the applicable limitations specified in such Section)), and the entire amount of the Commitments shall be automatically terminated.

(ii) Debt Incurrence. Upon its receipt of the proceeds of any Debt Incurrence, the Borrower shall promptly (but in no event later than three (3) Business Days after the receipt of the proceeds of such Debt Incurrence) prepay the principal of and interest and any other amounts owing on the Loans to the extent such amounts were used to pay to

carry out the Approved Environmental Plan in an aggregate amount equal to the lesser of (a) 100% of the proceeds of such Debt Incurrence or (b) the amounts then outstanding hereunder used to pay to carry out the Approved Environmental Plan, and the amount of the Commitments shall be automatically and permanently reduced, on a pro rata basis, by the amount so prepaid.

(iii) Excess Exposure. If at any time the total Credit Exposure exceeds the aggregate Commitments, the Borrower shall prepay the Revolving Loans or Swingline Loans in an amount equal to the excess of the total Credit Exposure over the total aggregate Commitments. If after prepayment in full of the outstanding Revolving Loans and Swingline Loans the total Credit Exposure still exceeds the total aggregate Commitments, the Borrower shall provide Cash Collateral for LC Exposure as specified in Section 2.04(k) (and subject to the limitations set forth therein) in an amount equal to the excess of the total Credit Exposure over the aggregate Commitments.

(c) Notices, Etc. The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by facsimile or electronic communication) or electronic communication of any prepayment hereunder (i) in the case of prepayment of a LIBO Borrowing, not later than 11:00 a.m., New York City time, three (3) Business Days before the date of such prepayment, (ii) in the case of prepayment of a Revolving ABR Borrowing, not later than 11:00 a.m., New York City time, one (1) Business Day before the date of such prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, New York City time, on the date of such prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.07, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.07. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11. If the Borrower fails to make a timely selection of the Borrowing or Borrowings to be prepaid, such prepayment shall be applied, first, to pay any outstanding ABR Borrowings and, second, to other Borrowings in the order of the remaining duration of their respective Interest Periods (the Borrowing with the shortest remaining Interest Period to be prepaid first). Each prepayment of a Revolving Borrowing shall be applied ratably to the Loans included in such Borrowing.

#### Section 2.10 Fees.

(a) Facility Fee. The Borrower agrees to pay to the Administrative Agent for the ratable account of each Lender, based upon their respective Commitments, a Facility Fee, which shall accrue at a rate equal to the applicable Facility Fee Percentage in effect on the amount of

the Commitment of such Lender during the period from and including the date hereof to but excluding the earlier of the date such Commitment terminates and the Maturity Date. Accrued Facility Fees shall be payable in arrears on each Quarterly Date and on the earlier of the date the Commitments terminate and the Maturity Date, commencing on the first such date to occur after the date hereof. All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to such Lender's participations in Letters of Credit, which shall accrue at a rate equal to the applicable LIBO Applicable Margin in effect on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, (ii) to the Issuing Lender a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure and (iii) the Issuing Lender's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including each Quarterly Date shall be payable on each Quarterly Date, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) Upfront Fee. The Borrower agrees to pay to the Lenders a certain non-refundable, one-time fee, on the Effective Date, as separately agreed upon by the Borrower and the Lead Arranger.

(d) Administrative Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(e) Lead Arranger Fees. The Borrower agrees to pay to each Lead Arranger, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and such Lead Arranger.

(f) Payment of Fees. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Lender, in the case of fees payable to it) for distribution, in the case of facility fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances.

Section 2.11 Interest.

(a) ABR Loans. The Loans constituting each ABR Borrowing (including each Swingline Loan) shall bear interest at a rate per annum equal to the Alternate Base Rate plus the ABR Applicable Margin.

(b) LIBO Loans. The Loans constituting each LIBO Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period for such Borrowing plus the LIBO Applicable Margin.

(c) Default Interest. Notwithstanding the foregoing, while any one or more Events of Default exist, the principal amount of all outstanding Loans, due and unpaid interest on the Loans and any other amounts outstanding hereunder and under any other Loan Document shall bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate otherwise applicable.

(d) Payment of Interest. The Borrower hereby unconditionally promises to pay accrued interest on each Loan, which shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Commitments and on the Maturity Date, as applicable; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Revolving ABR Loan prior to the termination of the Commitments or the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any LIBO Borrowing prior to the end of the Interest Period therefor, accrued interest on such Borrowing shall be payable on the effective date of such conversion.

(e) Computation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.12 Alternate Rate of Interest. If prior to the commencement of the Interest Period for any LIBO Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their respective Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, facsimile or electronic communication as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or the continuation of any Revolving Borrowing as, a LIBO Borrowing shall be ineffective and such Revolving Borrowing (unless prepaid) shall be continued as, or converted to, a Revolving ABR Borrowing and (ii) if any Borrowing Request requests a LIBO Borrowing, such Borrowing shall be made as a Revolving ABR Borrowing.

Section 2.13 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, the Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Lender or other Recipient, the Borrower will pay to such Lender, Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or Issuing Lender or any lending office of such Lender or such Lender's or Issuing Lender's holding company, if any, regarding capital or liquidity ratios or requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Lender's capital or on the capital of such Lender's or Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held



by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Lender's policies and the policies of such Lender's or Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Lender pursuant to this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Illegality. Notwithstanding any other provision of this Agreement, if a Change in Law shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender to perform its obligations hereunder to make LIBO Loans or to continue to fund or maintain LIBO Loans hereunder, then, on notice thereof and demand therefor by such Lender to the Borrower through the Administrative Agent, (i) each LIBO Loan will automatically, upon such demand, convert into an ABR Loan and (ii) the obligation of the Lenders to make, or to convert Loans into, LIBO Loans shall be suspended until the Administrative Agent shall notify the Borrower that such Lender has determined that the circumstances causing such suspension no longer exist.

Section 2.14 Break Funding Payments. In the event of (a) the payment of any principal of any LIBO Loan other than on the last day of an Interest Period therefor (including as a result of an Event of Default), (b) the conversion of any LIBO Loan other than on the last day of an Interest Period therefor, (c) the failure to borrow, convert, continue or prepay any LIBO Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice is permitted to be revocable under Section 2.09(c) and is revoked in accordance herewith), or (d) the assignment as a result of a request by the Borrower pursuant to Section 2.17(b) of any LIBO Loan other than on the last day of an Interest Period therefor, then, in any such event, the Borrower shall pay to the Administrative Agent (within fifteen days after such request) for the account of such Lender any amounts required to compensate such Lender for any additional

losses, costs or expenses that such Lender may reasonably incur as a result of such payment, failure to borrow, failure to convert, failure to continue or failure to prepay, including any loss, cost or expense actually incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such LIBO Loan. A certificate of any Lender setting forth any amount or amounts and, in reasonable detail, the calculation forming the basis thereof that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error.

#### Section 2.15 Taxes.

(a) Defined Terms. For purposes of this Section 2.15, the term “Lender” includes the Issuing Lender and the term “applicable law” includes FATCA

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 9.04(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the

Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 2.15(e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.15, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.15(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such

Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8 BEN-E, in each case, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8 BEN-E, in each case, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8 BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8 BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be

prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Tax Benefits. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of, or credit with respect to, any Taxes as to which it has been indemnified pursuant to this Section 2.15 (including by the payment of additional amounts pursuant to this Section 2.15) (any such refund or credit, a "Tax Benefit"), it shall pay to the indemnifying party an amount equal to such Tax Benefit (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such Tax Benefit), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such Tax Benefit). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such Tax Benefit to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such Tax Benefit had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.15 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 2.16 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or under Section 2.13, 2.14, 2.15 and 9.03, or otherwise) or under any other Loan Document (except to the extent otherwise provided therein) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent in such manner and place as shall from time to time be specified by the Administrative Agent, except as otherwise expressly provided in the relevant Loan Document and except payments to be made directly to the Issuing Lender or the Swingline Lender as expressly provided herein and payments pursuant to Section 2.13, 2.14, 2.15, and 9.03, which shall be made directly to the Persons entitled thereto pursuant to instructions provided to the Borrower by such Person. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder or under any other Loan Document (except to the extent otherwise provided therein) shall be made in Dollars.

(b) Application of Insufficient Payments. Except as may otherwise be provided for in the Indenture, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, to pay all fees, expense reimbursements, indemnities and all other sums due and payable to the Administrative Agent in its capacity as Administrative Agent and not as a Lender hereunder, (ii) second, to pay interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (iii) third, to pay principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Revolving Borrowing shall be made from the Lenders, each payment of facility fees under Section 2.10 shall be made for the account of the Lenders, and each termination or reduction of the amount of the Commitments under Section 2.07 shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (ii) each Revolving Borrowing shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Revolving Loans) or their respective

Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Revolving Loans by the Borrower shall be made for the account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Revolving Loans held by them; and (iv) each payment of interest on Revolving Loans by the Borrower shall be made for the account of the Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

(d) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(B) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then

each of the Lenders or the Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Prime Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(e), Section 2.05(a), Section 2.16(e), Section 2.18(c), or Section 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

#### Section 2.17 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.13, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.17(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 9.04), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.13 or Section 2.15) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 9.04;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it



hereunder and under the other Loan Documents (including any amounts under Section 2.14) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### Section 2.18 Swingline Loans.

(a) Agreement to Make Swingline Loans. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding \$25,000,000 or (ii) the total Credit Exposures exceeding the total Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) Notice of Swingline Loans by the Borrower. To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by facsimile or electronic communication) or electronic communication, not later than 11:00 a.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender or such other account specified by the Borrower to the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.04(f), by remittance to the Issuing Lender) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan.

(c) Participations by Lenders in Swingline Loans. The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice to the Administrative Agent shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly

upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above in this paragraph, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.05 with respect to Loans made by such Lender (and Section 2.05 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

#### Section 2.19 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender or Swingline Lender hereunder; *third*, to Cash Collateralize the Issuing Lender's LC Exposure with respect to such Defaulting Lender in accordance with Section 2.19(d); *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to

the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Lender's future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.19(d); *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lender or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to Section 2.19(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.19(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Facility Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive letter of credit fees payable under Section 2.10(b) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.19(d).

(C) With respect to any Facility Fee or letter of credit fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such

fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Exposure or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Exposure and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, (subject to the limitations described in the first sentence of Section 2.04(k)) Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 2.19(d).

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments (without giving effect to Section 2.19(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or the Issuing Lender (with a copy to the Administrative Agent) the Borrower shall (subject to the limitations described in the first sentence of Section 2.04(k)) Cash Collateralize the Issuing Lender's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.19(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Grant of Security Interest. Subject to the limitations described in the first sentence of Section 2.04(k), the Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Exposure, to be applied pursuant to clause (ii) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.19 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Exposure (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Issuing Lender's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.19(d) following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and the Issuing Lender that there exists excess Cash Collateral; provided that, subject to the other provisions of this Section 2.19, the Person providing Cash Collateral and the Issuing Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to each of the Lenders, the Issuing Lender, the Swingline Lender and the Administrative Agent that:

Section 3.01 Organization; Powers. The Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to be so qualified, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability; Ranking.

(a) The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary Member action. Each of the Loan Documents has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The Loans as evidenced by the Secured Promissory Notes constitute Obligations under the Indenture and rank *pari passu* with all other Obligations issued under the Indenture. The Secured Promissory Notes are entitled to all the benefits of the Indenture. Each Lender is a Holder of an Obligation under the Indenture.

Section 3.03 Governmental Approvals; No Conflicts. The (i) Transactions (including the use of any Credit Extensions), (ii) grant by the Borrower of the Liens granted by it pursuant to the Security Documents (other than Cash Collateral granted pursuant to this Agreement as to which no representation is made), (iii) perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof, but subject to the Liens permitted by Section 6.02(c)) and (iv) exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Security Documents (except for UCC-1 Financing Statements that will be filed on the Effective Date pursuant to Section 4.01(a)), (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or third party (including the RUS) except such as have been obtained or filed or made and are in full force and effect (which includes the KPSC approval for the Transactions), (b) will not violate or conflict with any applicable law, rule, regulation (including, without limitation, Regulation T, U or X of the Board), writ, judgment, injunction, decree or award, (c) will not violate or conflict with the Borrower's Articles of Incorporation or By-laws or any other organizational documents of the Borrower or any order of any Governmental Authority having applicability to the Borrower, (d)

will not violate or conflict with or result in a default under the Indenture, any Wholesale Power Contract, any Direct Service Contract or any other material indenture, agreement or other material instrument binding upon the Borrower or any of its assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower (other than in favor of the Administrative Agent and the Lenders, solely in their capacity as Lender and/or Administrative Agent under Loan Documents).

Section 3.04 Financial Condition; No Material Adverse Change.

(a) Financial Condition. The Borrower has heretofore furnished to the Lenders its consolidated (where applicable) balance sheet and statements of operations, Members' equities and cash flows as of and for the fiscal years ended December 31, 2010, 2011, 2012 and 2013, respectively, reported on by KPMG LLP, independent public accountants. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on, where applicable, a consolidated basis as of such dates and for such periods in accordance with GAAP.

(b) No Material Adverse Effect. Since December 31, 2013, except as otherwise listed on Schedule VII, no Material Adverse Effect has occurred.

Section 3.05 Properties; Insurance.

(a) Property Generally. The Borrower has good title to, or valid leasehold interests in, all its real and personal property comprising the Trust Estate and other property material to the Borrower's business, including all rights, licenses, permits, privileges and franchises, in each case, subject only to Liens permitted by Section 6.02.

(b) Intellectual Property. The Borrower owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and, to the knowledge of the Borrower, the use thereof by the Borrower does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) Insurance. The Borrower maintains insurance, which is effected with responsible insurance carriers, in such amounts and against such risks as are customarily carried or maintained by companies engaged in the same or similar businesses operating in the same or similar locations as the Borrower. The Borrower is in compliance with all insurance requirements set forth in the Indenture.

Section 3.06 Litigation. Except as set forth on Schedule V, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that question the validity or enforceability of this Agreement, any of the other Loan Documents or the Transactions.

### Section 3.07 Environmental Matters.

(a) Environmental Permits. The Borrower has obtained all material environmental, health and safety permits, licenses, consents, approvals and other authorizations required under all Environmental Laws ("Environmental Permits") to carry on its business. Each of such Environmental Permits is in full force and effect and the Borrower is in compliance with the terms and conditions thereof and with all Environmental Laws except in each case where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(b) No Liability under Environmental Laws. Except, whether individually or in the aggregate, as could not reasonably be expected to result in a Material Adverse Effect (i) the Borrower does not have any liability under any Environmental Law which is due and payable but not paid, nor (ii) to the Borrower's best knowledge, is Borrower responsible for any liability of any other Person under any Environmental Law which is due and payable but not paid, whether by contract, by operation of law or otherwise. There are no pending or, to the Borrower's best knowledge, threatened Environmental Claims that could reasonably be expected to result in a Material Adverse Effect.

(c) Real Property. The real property owned, operated or leased by the Borrower ("Real Property") contains no underground improvements, including but not limited to treatment or storage tanks, or underground piping associated with such tanks, used currently or in the past for the management of Hazardous Materials which could reasonably be expected to result in a Material Adverse Effect. Except, whether individually or in the aggregate, as could not reasonably be expected to result in a Material Adverse Effect, to the knowledge of Borrower, neither PCBs, "toxic mold", nor asbestos-containing materials are present on or in the Real Property and there has been no Release of Hazardous Materials at, on, under, or from the Real Property, nor was there such a Release at any real property formerly owned, operated or leased by the Borrower during the period of such ownership, operation or tenancy, such that the Borrower is or could be liable for Remediation with respect to such Hazardous Materials.

(d) No Hazardous Material Transported to NPL Sites. To the Borrower's best knowledge, the Borrower has not transported or arranged, by contract, agreement or otherwise, for the treatment, disposal or transportation of any Hazardous Material to any location that is listed or proposed for listing on the National Priorities List ("NPL") under CERCLA, or on any similar state or local list or at any location such that the Borrower is or could reasonably be expected to be liable for any Remediation of such location pursuant to Environmental Laws.

(e) No Liens or Restrictions under Environmental Laws. No Liens have arisen under or pursuant to any Environmental Laws on any site or facility owned, operated or leased by the Borrower, and no government action has been taken or is in process that could subject any such site or facility to such Liens or that would require the Borrower to place any notice or restriction relating to the presence of Hazardous Materials at any site or facility owned by it in any deed to the Real Property on which such site or facility is located, except, in each case, as could not reasonably be expected to result in a Material Adverse Effect.

Section 3.08 Compliance with Laws and Agreements. The Borrower is in compliance with all laws, rules, regulations, writs, judgments, decrees, awards and orders of any



Governmental Authority applicable to it or its property and with all indentures, leases, loan agreements, deeds of trust, agreements and other instruments binding upon it or its property, except where the failure to be in such compliance, individually or in the aggregate, has not resulted in, or could not reasonably be expected to result in, a Material Adverse Effect. The Borrower is in compliance with all applicable rules, regulations and orders of the KPSC, including any Authorizations, except where the failure to be in such compliance, individually or in the aggregate, has not resulted in, or could not reasonably be expected to result in, a Material Adverse Effect. No Default has occurred and is continuing.

Section 3.09 Investment Company Status; Etc. The Borrower is not (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, (b) a “natural gas company” as defined in, or subject to regulation under, the Natural Gas Act of 1938 as amended or (c) a “holding company”, as such term is defined in, or subject to regulation under, the Public Utility Holding Company Act of 2005. The Borrower is exempt from regulation as a “public utility” under the Federal Power Act, as amended.

Section 3.10 Solvency. The Borrower is, and after giving effect to each Borrowing hereunder will be, Solvent.

Section 3.11 Taxes. The Borrower has timely filed or caused to be filed (i) all federal income Tax returns and reports and (ii) all other material Tax returns and reports, in each case, required to have been filed, and each of such Tax returns and reports was at the time filed accurate and complete in all material respects. The Borrower has timely paid or caused to be paid all Taxes (including any interest penalties or other additions to such Taxes) required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Person has set aside on its books adequate reserves in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.12 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect. Except as, either individually or in the aggregate, has not had, and could not reasonably be expected to have, a Material Adverse Effect, the Borrower and its ERISA Affiliates (i) have timely made all required contributions to each Plan that is an “employee pension benefit plan” within the meaning of Section 3(2)(A) of ERISA (other than a Plan that is subject to Title IV of ERISA or Title 412 of the Code), (ii) have made all required payments to the sponsor of each multiple-employer plan (within the meaning of Section 4063 of the Code) in which the Borrower’s employees participate, (iii) are not required to make any contribution to a Multiemployer Plan, and (iv) to the Knowledge of the Borrower, have not incurred any liability to the PBGC with respect to any Plan that is subject to Title IV of ERISA or Title 412 of the Code or with respect to any Multiemployer Plan (other than to make contributions in the ordinary course of business).

Section 3.13 Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower to the Lenders in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder, (in each case, as modified or supplemented by other information so furnished and

taken as a whole) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected information and pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 3.14 Use of Credit. The Borrower is not engaged, directly or indirectly, in the business of extending credit to others or arranging for the extension or maintenance by others of credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any extension of credit hereunder will be used to purchase or carry any Margin Stock.

Section 3.15 Material Agreements and Liens.

(a) Material Agreements. Part A of Schedule II is a complete and correct list, as of the Effective Date, of each lease, deed of trust, mortgage, credit agreement, loan agreement, indenture, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness, which individually exceeds \$10,000,000, outstanding on the date hereof.

(b) Liens. Part B of Schedule II is a complete and correct list, as of the Effective Date, of each Lien securing Indebtedness, which individually exceeds \$10,000,000, outstanding on the date hereof and covering any property of the Borrower, and the aggregate Indebtedness secured (or that may be secured) by each such Lien and the property covered by each such Lien is correctly described, in all material respects, in Part B of Schedule II.

Section 3.16 Subsidiaries and Affiliates.

(a) The Borrower has no Subsidiaries.

(b) Set forth in Schedule III is a complete and correct list of all of the Affiliates of the Borrower as of the date hereof, together with, for each such Affiliate, (i) the jurisdiction of organization of such Affiliate, (ii) each Person holding ownership interests in such Affiliate and (iii) the nature of the ownership interests held by each such Person and the percentage of ownership of such Affiliate represented by such ownership interests.

Section 3.17 Wholesale Power Contracts and Material Direct Serve Contracts. The Borrower has heretofore delivered to the Administrative Agent complete and correct copies of the Wholesale Power Contracts and Material Direct Serve Contracts in effect on the date hereof and each amendment and supplement agreement thereto. Set forth on Schedule IV are the Wholesale Power Contracts and the Material Direct Serve Contracts in effect as of the date hereof. To the Borrower's actual knowledge, there is no condition or circumstance that would impair any Member's ability to perform its obligations under any Wholesale Power Contract or Material Direct Serve Contract to which it is a party. The Wholesale Power Contracts and Direct Serve Contracts are legal, valid and binding upon the Borrower and enforceable against the Borrower in accordance with their respective terms.

Section 3.18 Patriot Act Compliance. To the extent applicable, the Borrower is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and

each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the “Patriot Act”). No part of the proceeds of the Loans made hereunder will be used by the Borrower, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.19 OFAC Compliance. The Borrower is not in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC or any Anti-Terrorism Laws. The Borrower (a) is not a Sanctioned Person or a Sanctioned Entity, (b) does not have any of its assets located in Sanctioned Entities, and (c) does not derive any of its revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any Loan will be used by the Borrower to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity. The Borrower will not engage in any dealings or transactions prohibited by any Anti-Terrorism Law.

Section 3.20 RUS Compliance. The Borrower is in compliance with the RUS Regulations applicable to it and with all covenants and agreements set forth in any agreement or instrument with RUS to which the Borrower is a party, in each case, except as would not reasonably be expected to result in a Material Adverse Effect.

Section 3.21 Indenture. No “Event of Default” (as such term is defined in the Indenture) (or its equivalent successor term) in the Indenture has occurred and is continuing under the Indenture.

Section 3.22 Labor Disputes; Natural Disasters. As of the Effective Date, neither the business nor the properties of the Borrower are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, terrorism, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that could be reasonably expected to have a Material Adverse Effect.

## ARTICLE IV

### CONDITIONS

Section 4.01 Effective Date. This Agreement, despite its date, shall not become effective, and the Lenders shall have no obligation to make Loans and the Issuing Lender shall have no obligation to issue Letters of Credit hereunder, until the date on which the last of the following conditions precedent have been satisfied (or such conditions shall have been waived in accordance with Section 9.02).

(a) Closing Deliverables. The Administrative Agent shall have received the following, each dated as of the date hereof (unless otherwise specified), in form and substance satisfactory to the Administrative Agent (and to the extent specified below, each Lender):

(i) Executed Counterparts. (A) From each party hereto, either (1) a counterpart of this Agreement signed on behalf of such party or (2) written evidence satisfactory to the Administrative Agent (which may include telecopy or other electronic transmission of a signed signature page to this Agreement) that such party has signed a counterpart of this Agreement, and (B) from the Borrower and the Trustee, a fully executed and authenticated Fifth Supplemental Indenture, in the form attached hereto as Exhibit H, and the Secured Promissory Notes.

(ii) Security Documents. The Indenture and the Fifth Supplemental Indenture shall have been duly filed, recorded or indexed in all jurisdictions necessary to provide the Trustee thereunder a perfected lien, subject to Permitted Exceptions (as defined in the Indenture), on all of the Trust Estate (as defined in the Indenture), all in accordance with applicable law, and the Borrower shall have paid all applicable taxes, recording and filing fees and caused satisfactory evidence thereof to be furnished to the Lenders.

(iii) UCC Filings. Acknowledgment copy of a UCC-1 financing statement, duly filed on or before the Effective Date under the Uniform Commercial Code in all jurisdictions that the Administrative Agent may deem necessary or desirable to perfect and protect the first priority liens and security interests (subject to the Liens permitted by Section 6.02) created under the Security Documents, covering the Collateral.

(iv) Indenture Documents. Copies of all documents required to be delivered to the Trustee under Section 4.1, 4.2 and 4.3 of the Indenture with respect to the issuance of the Secured Promissory Notes.

(v) RUS Application. Evidence satisfactory to the Administrative Agent and the Lenders that the Borrower has completed and submitted an application to the RUS in accordance with the RUS' guidelines seeking not more than \$30,000,000 in long-term debt financing from the RUS for the Borrower's environmental upgrade expenditures related to the Approved Environmental Plan (the "RUS Loan").

(vi) Opinion of Counsel to the Borrower. A favorable written opinion (addressed to the Administrative Agent, the Issuing Lender, the Swingline Lender and the Lenders and dated the Effective Date) of (i) Sullivan, Mountjoy, Stainback & Miller, P.S.C., counsel for the Borrower, substantially in the form of Exhibit B-1, and covering such other matters relating to the Borrower, this Agreement or the Transactions as the Required Lenders shall reasonably request (and the Borrower hereby instructs such counsel to deliver such opinion to the Administrative Agent and the Lenders), and (ii) Orrick, Herrington & Sutcliffe LLP, special counsel to the Borrower, substantially in the form of Exhibit B-2, and covering such other matters relating to the Borrower, this Agreement or the Transactions as the Required Lenders shall reasonably request (and the Borrower hereby instructs such counsel to deliver such opinion to the Administrative Agent and the Lenders).

(vii) Corporate Documents. Such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrower, the authorization of the Transactions and any other legal matters relating to the Borrower, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel.

(viii) Officer's Certificate. A certificate, dated the Effective Date and signed by two Responsible Officers of the Borrower certifying, representing and warranting that (A) the representations and warranties contained in the Loan Documents are true and correct as of the date hereof, (B) there is no event occurring and continuing, or resulting from the execution of this Agreement or the other Loan Documents or the Borrowing (deeming a Borrowing of at least \$1.00 to occur on the date hereof), that constitutes a Default or which with giving notice or with a lapse of time or both would constitute a Default, (C) except as otherwise listed on Schedule VII, since December 31, 2013, no Material Adverse Effect has occurred and is continuing, (D) there is no condition or circumstance that would impair the ability of the parties to the Borrower's Wholesale Power Contracts and Direct Serve Contracts to perform their obligations thereunder, and (E) (x) consolidated (where applicable) balance sheet and statements of revenues, expenses and patronage capital as of and for the fiscal years ended December 31, 2010, 2011, 2012 and 2013 respectively, reported on by KPMG LLP, independent public accountants, and (y) consolidated (where applicable) balance sheet and statements of revenues, expenses and patronage capital as of and for the fiscal quarter ended September 30, 2014, which has heretofore been furnished by the Borrower to the Lenders, in each case, presents fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on, where applicable, a consolidated basis as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (y).

(ix) Solvency Certificate. A certificate in substantially the form of Exhibit G hereto attesting to the Solvency of the Borrower before and after giving effect to the closing of the Transactions, from the Borrower's chief financial officer.

(x) Insurance. Evidence of insurance satisfying the requirements of Section 5.07.

(xi) Indenture. A copy of the Indenture and each amendment, supplement or modification thereto as in effect on the date hereof, certified, represented and warranted to be true and correct by a Responsible Officer.

(xii) Termination of Existing Credit Facility. Evidence of the concurrent payment in full of the outstanding loans and other extensions of credit under the Existing Credit Facility (other than the Existing Letters of Credit, which shall be outstanding under this Agreement), including, but not limited to, the delivery of payoff or termination letters in connection therewith.

(xiii) Wholesale Power Contracts. A copy of all Wholesale Power Contracts and Material Direct Serve Contracts, including any amendments, supplements or modifications thereto, certified, represented and warranted to be true and correct by a Responsible Officer.

(xiv) Other Documents and Financial Information. Other documents or financial information (of the Borrower) as the Administrative Agent, any Lender or special New York counsel to the Administrative Agent may reasonably request, which shall be satisfactory in form and substance to the Administrative Agent, including, without limitation, original promissory notes, information as to possible contingent liabilities, tax matters, environmental matters, obligations under Plans and Multiemployer Plans, collective bargaining agreements and other arrangements with employees, and a forecast prepared by management of the Borrower including a balance sheet and income statement on an annual basis for each year until the Maturity Date.

(b) Litigation. Except as set forth on Schedule V, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened against the Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that question the validity or enforceability of this Agreement or any of the other Loan Documents or the Transactions.

(c) Authorizations. All Authorizations (including the Authorization of KPSC permitting the Borrower to enter into the Transactions), if any, shall have been obtained and been provided to the Administrative Agent (without the imposition of any conditions that are not acceptable to the Lenders) and shall remain in effect as of the Effective Date; all applicable waiting periods in connection with the Transactions shall have expired without any action being taken by any competent authority, and no law or regulation shall be applicable in the reasonable judgment of the Lenders that restrains, prevents or imposes materially adverse conditions upon the Transactions.

(d) No Default. No Default or Event of Default has occurred or is continuing. No “Event of Default” (as such term is defined in the Indenture) has occurred or continuing under the Indenture.

(e) Anti-Terrorism Compliance. At least two Business Days before the Effective Date each Lender shall have received all documents and other information requested by it that is required by bank regulatory authorities under applicable “know your customer” and anti money-laundering rules and regulations, including the Patriot Act.

The obligation of each Lender to make its initial extension of credit hereunder is also subject to the payment by the Borrower of such fees as the Borrower shall have agreed to pay to any Lender, the Arranger, and the Administrative Agent in connection herewith, including the reasonable fees and expenses of Norton Rose Fulbright, counsel to the Administrative Agent, in connection with the negotiation, preparation, execution and delivery of this Agreement and the

other Loan Documents and the extensions of credit hereunder (to the extent that statements for such fees and expenses have been delivered to the Borrower).

The Administrative Agent shall, immediately after all of the conditions under this Section have been met, notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Lender to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) on or prior to 3:00 p.m., New York City time, on March 31, 2015 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Section 4.02 Each Credit Extension. The obligation of each Lender to make any Loan, of the Swingline Lender to make any Swingline Loan and of the Issuing Lender to issue, amend, renew or extend any Letter of Credit (each of the foregoing, a “Credit Extension”), is subject to the satisfaction of the following conditions:

(a) the representations and warranties of the Borrower set forth in this Agreement and in the other Loan Documents shall be true and correct on and as of the date of such Loan or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, (except for the representations contained in Section 3.04(b), Section 3.06, Section 3.07, Section 3.13, Section 3.15 and Section 3.16 which shall have been true and correct as of the Effective Date);

(b) at the time of and immediately after giving effect to such Loan or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing; and

(c) in connection with the issuance, amendment, renewal or extension of any Letter of Credit, the Borrower shall have furnished to the Administrative Agent such additional documents as the Administrative Agent or any Lender may reasonably request.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in the preceding sentence.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent (who will furnish a copy thereof to each Lender):

(a) within one hundred and twenty (120) days after the end of each fiscal year of the Borrower, the audited consolidated (where applicable) balance sheet and related statements of operations, Members' equity and cash flows of the Borrower as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by KPMG, LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception) to the effect that such consolidated (where applicable) financial statements present fairly in all material respects the financial condition and results of operations of the Borrower on, where applicable, a consolidated basis in accordance with GAAP consistently applied;

(b) within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, the consolidated (where applicable) balance sheet and related statements of operations, Members' equity and cash flows of the Borrower as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for (or, in the case of the balance sheet, as of the end of) the corresponding period or periods of the previous fiscal year, all certified by a Responsible Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower on, where applicable, a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under paragraph (a) or (b) of this Section, a certificate of the Borrower's chief financial officer (or other Responsible Officer acceptable to the Administrative Agent), substantially in the form of Exhibit D, (i) certifying as to whether an Event of Default or a Default has occurred and, if an Event of Default or a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto and (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.07;

(d) promptly after the same become publicly available, (i) a copy of the KPSC annual financial and statistical report, (ii) notice of any filing with the KPSC or FERC that seeks a change in the Borrower's tariff, a certificate of public convenience and necessity, authority to issue evidences of indebtedness, or approval for a change in ownership or control of assets owned by the Borrower and (iii) copies all periodic and other reports and other materials filed by the Borrower with the SEC;

(e) promptly after the same are submitted to the RUS by the Borrower, copies of RUS Form 12a filed by the Borrower with RUS;

(f) (i) concurrently with the delivery thereof to any holder of obligations under the Indenture, or to any trustee, agent or representative therefor, copies of all notices relating to any "Event of Default" or other default under the Indenture, (ii) promptly upon receipt thereof, copies of any notices relating to any "Event of Default" under the Indenture received from any holder of obligations under the Indenture, or any trustee, agent or representative therefor, and (iii) promptly upon the execution thereof, copies of any supplements, amendments or other modifications or agreements with respect to the Indenture; and



(g) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower, or compliance with the terms of this Agreement and the other Loan Documents, as the Administrative Agent or any Lender may reasonably request.

Section 5.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt (and in the case (I) of the matters set forth in clauses (b), (c) and (d) of this Section 5.02, no later than ten (10) days after a Responsible Officer becomes aware of the occurrence thereof and (II) of the matters set forth in clauses (e) through (h) of this Section 5.02, no later than thirty (30) days after a Responsible Officer becomes aware of the occurrence thereof) written notice of the following:

- (a) the occurrence of any (i) Event of Default or (ii) any Default;
- (b) the filing or commencement of any material action, suit or proceeding by or before any arbitrator or Governmental Authority against the Borrower, that could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in liability of the Borrower in an aggregate amount exceeding \$10,000,000;
- (d) the existence or assertion of any Environmental Claim by any Person against, or with respect to the activities of, the Borrower and any alleged violation of or liability under any Environmental Laws or any Environmental Permits, in each case, that could reasonably be expected to result in a Material Adverse Effect;
- (e) (i) any permitted termination of, modification to or supplement to a Wholesale Power Contract that will result in a material change thereto and (ii) (A) permanent shutdown or material curtailment of the operations of any Borrower member retail customer for which wholesale service is provided under a Material Direct Serve Contract, (B) material modification to a Material Direct Serve Contract, and (C) termination of any Material Direct Serve Contract;
- (f) any other development, including an ERISA Event or an Environmental Claim, that results in, or could reasonably be expected to result in a Material Adverse Effect;
- (g) the occurrence of any (i) merger, (ii) consolidation or (iii) conveyance or transfer of assets or property having a value in excess of \$5,000,000 in a single transaction or \$10,000,000 in the aggregate, in each case, relating to the Borrower; and
- (h) receipt of funds pursuant to any Debt Incurrence.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03 New Wholesale Power Contract; New Material Direct Serve Contracts. The Borrower shall provide the Administrative Agent with copies of any new Wholesale Power

Contract and new Material Direct Serve Contracts (together with material amendments or supplements thereto and all successor or replacement contracts and agreements thereto and thereof) entered into after the date hereof.

Section 5.04 Compliance with Indenture Covenants. The Borrower shall comply with all the covenants set forth in Article XI (entitled “Consolidation, Merger, Conveyance or Transfer”) and Article XIII (entitled “Covenants”) of the Indenture.

Section 5.05 Existence; Conduct of Business. The Borrower will do or cause to be done all things necessary to preserve, renew and keep in full force and effect (a) its legal existence and (b) all of its rights, privileges and franchises that are necessary for the operation of its business.

Section 5.06 Payment of Obligations. The Borrower will pay its obligations, including tax liabilities before the same shall become delinquent or in default, that, if not paid, could result in a Material Adverse Effect, except where the validity or amount thereof is being contested in good faith by appropriate proceedings.

Section 5.07 Maintenance of Properties; Insurance. The Borrower will (a) maintain all property comprising the Trust Estate as required by the Indenture and all other property material to its business, and (b) at all times keep all its property of an insurable nature and of the character usually insured, with responsible insurance carriers, by companies operating similar properties, insured in amounts customarily carried, and against loss or damage from such causes as are customarily insured against, by similar companies and in, any event, the Borrower shall maintain insurance as required by the Indenture.

Section 5.08 Books and Records; Inspection Rights. The Borrower will keep, in accordance with GAAP, proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice and during normal business hours, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers, all at such reasonable times and as often as reasonably requested.

Section 5.09 Compliance with Laws and Material Contractual Obligations; Enforcement of Contracts. The Borrower will (a) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including, without limitation, all Environmental Laws and the provisions of ERISA), all writs, judgments, decrees and awards, without limitation, and the Indenture and all other material contractual obligations and (b) enforce provisions of any contracts with smelters or Kenergy Corp. requiring the maintenance of letters of credit naming the Borrower as the beneficiary thereof, except, in each case of clause (a) or (b), where the failure to so comply or enforce, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.10 Use of Proceeds and Letters of Credit. Extensions of credit hereunder (whether Loans or Letters of Credit) will be used only for general corporate and working capital purposes (including, without limitation, the repayment and termination of the Existing Credit

Facility (other than the Existing Letters of Credit, which shall be outstanding under this Agreement)) and for the issuance of standby Letters of Credit pursuant to the terms of this Agreement; provided that neither the Administrative Agent nor any Lender shall have any responsibility as to the use of any such proceeds. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U, T and X.

Section 5.11 Identification of Parties. The Borrower will comply with all reasonable requests by or on behalf of the Lenders, or any of them, for information concerning the identification of the Borrower, including, without limitation, its corporate organization, place or places of business, operations and registration or qualification to do business in any place, senior management, and principal ownership, for purposes of complying with the Bank Secrecy Act, P.L. 97 258 (September 13, 1982), as amended, and all regulations adopted thereunder and the Patriot Act, and for information concerning the use or destination of the proceeds of the Loans, for purposes of complying with the Trading With the Enemy Act of 1917, ch. 106, 40 Stat. 411 (October 6, 1917), as amended, and all regulations adopted and executive orders issued thereunder.

Section 5.12 Execution of Additional Documents. The Borrower will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), which are required under any applicable law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Borrower. The Borrower also agrees to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

Section 5.13 Permits, Licenses and Approvals. The Borrower will obtain and, as applicable, maintain in full force and effect, all permits, licenses, orders, consents or approvals (whether from Governmental Authorities, regulatory bodies or otherwise) necessary or required in the Borrower's business, except where the failure to so obtain or maintain, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.14 CoBank Equities and Security.

(a) So long as CoBank is a Lender hereunder, Borrower will (i) maintain its status as an entity eligible to borrow from CoBank and (ii) acquire equity in CoBank in such amounts and at such times as CoBank may require in accordance with CoBank's Bylaws and Capital Plan (as each may be amended from time to time), except that the maximum amount of equity that Borrower may be required to purchase in CoBank in connection with the Loans made by CoBank may not exceed the maximum amount permitted by the Bylaws and Capital Plan at the time this Agreement is entered into. Borrower acknowledges receipt of a copy of (A) CoBank's most recent annual report, and if more recent, CoBank's latest quarterly report, (B) CoBank's Notice to Prospective Stockholders and (C) CoBank's Bylaws and Capital Plan, which describe

the nature of all of Borrower's interest in the CoBank Equities, and agrees to be bound by the terms thereof.

(b) Each party hereto acknowledges that CoBank's Bylaws and Capital Plan (as each may be amended from time to time) shall govern (i) the rights and obligations of the parties with respect to the CoBank Equities and any patronage refunds or other distributions made on account thereof or on account of Borrower's patronage with CoBank, (ii) Borrower's eligibility for patronage distributions from CoBank (in the form of CoBank Equities and cash) and (iii) patronage distributions, if any, in the event of a sale of a participation interest. CoBank reserves the right to assign or sell participations in all or any part of its Commitments or outstanding Loans hereunder on a non-patronage basis.

(c) Each party hereto acknowledges that CoBank has a statutory first lien pursuant to the Farm Credit Act of 1971 (as amended from time to time) on all CoBank Equities that the Borrower may now own or hereafter acquire, which statutory lien shall be for CoBank's sole and exclusive benefit. The CoBank Equities shall not constitute security for the Borrower's obligations due to any other Lender. To the extent that any of the Loan Documents create a Lien on the CoBank Equities or on patronage accrued by CoBank for the account of Borrower (including, in each case, proceeds thereof), such Lien shall be for CoBank's sole and exclusive benefit and shall not be subject to pro rata sharing hereunder. Neither the CoBank Equities nor any accrued patronage shall be offset against the obligations of the Borrower hereunder except that, in the event of an Event of Default, CoBank may elect, solely at its discretion, to apply the cash portion of any patronage distribution or retirement of equity to amounts due under this Agreement. Borrower acknowledges that any corresponding tax liability associated with such application is the sole responsibility of Borrower. CoBank shall have no obligation to retire the CoBank Equities upon any Event of Default, Default or any other default by Borrower or any other Loan Party, or at any other time, either for application to the obligations of the Borrower hereunder or otherwise.

## ARTICLE VI

### NEGATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 6.01 Indebtedness. The Borrower will not create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness of the Borrower created hereunder or under any other Loan Document;

(b) Indebtedness of the Borrower secured under the Indenture or any Additional Obligations (as such term is defined in the Indenture as of the date hereof) permitted by the Indenture;

(c) Capital Lease Obligations and Purchase Money Indebtedness in an aggregate principal amount not to exceed at any time \$20,000,000;

(d) Indebtedness under Hedging Agreements entered into in the ordinary course of the Borrower's financial planning and not for speculative purposes; and

(e) Indebtedness not otherwise permitted by this Section 6.01 (that is not secured by any Lien or other encumbrance) incurred by the Borrower, in an aggregate principal amount not to exceed at any one time (whether committed or outstanding) \$50,000,000.

Section 6.02 Liens. The Borrower will not create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Exceptions (as defined in the Indenture) and other Liens not prohibited by Section 13.6 of the Indenture;

(b) Liens securing Indebtedness issued under the Indenture;

(c) Liens created under the Loan Documents;

(d) Liens in favor of CFC in connection with the purchase by the Borrower of any CFC Capital Term Certificates; and

(e) CoBank's statutory Lien in the CoBank Equities.

Section 6.03 Subsidiaries. The Borrower shall not, and shall not cause to, establish, create or maintain any Subsidiary of the Borrower without the consent of the Required Lenders, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 6.04 Lines of Business. The Borrower will not engage to any business other than the business of generating, transmitting and selling, directly or indirectly, electric power and energy and activities associated with or incidental to the same.

Section 6.05 Investments. The Borrower will not make, or permit to remain outstanding, any Investments except:

(a) Investments outstanding on the date hereof and set forth on Schedule VI;

(b) operating deposit accounts with banks;

(c) Investments consisting of security deposits or payment or performance bonds made in the ordinary course of business;

(d) Hedging Agreements entered into in the course of the Borrower's financial planning and not for speculative purposes;

(e) Investments not prohibited by the Indenture to be made by the Borrower;

- (f) Investments in CFC Capital Term Certificates or in CoBank Equities; and
- (g) Guarantees permitted under Section 6.01.

**Section 6.06 Transactions with Affiliates.** The Borrower will not sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates, except (a) transactions in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower than could be obtained on an arm's-length basis for any such transaction from unrelated or un-Affiliated third parties recognizing the not-for-profit, cooperative business of the Borrower, and (b) transactions expressly permitted under this Agreement.

**Section 6.07 Certain Financial Covenants.**

(a) **Margins for Interest Ratio.** The Borrower will not permit its Margins for Interest Ratio for any fiscal year to be less than 1.10 to 1.00; *provided*, that upon the Borrower having received a Secured Credit Rating from any two of S&P, Moody's and Fitch that is higher than BB+, Ba1 and BB+, respectively, the Borrower may provide notice thereof to the Lenders and from and after the receipt of such notice by the Lenders and so long as the Borrower maintains such Secured Credit Ratings the Borrower shall be in compliance with this Section 6.07 so long as the Borrower complies with the Margins for Interest Ratio covenant set forth in Section 13.14 of the Indenture as in effect as of the date hereof.

(b) **Members' Equities' Balance.** The Borrower will maintain, in accordance with GAAP, a minimum Members' Equities' Balance at each fiscal quarter-end and as of the last day of each fiscal year, as specified below during the following calendar year periods:

<b>Period Ending (and the Fiscal Quarters Ending Therein)</b>	<b>Amount</b>
December 31, 2014	\$375,000,000
December 31, 2015	\$375,000,000 plus 50% of the positive net margins for the Borrower's fiscal year ending December 31, 2014
December 31, 2016	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014 and December 31, 2015
December 31, 2017	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014, December 31, 2015 and December 31, 2016

Section 6.08 Hedging Agreements. The Borrower will not enter into Hedging Agreements other than in the ordinary course of business and not for speculative purposes.

Section 6.09 Certain Documents. The Borrower will not consent to any modification, supplement or waiver of any of the provisions of its charter, by-laws or any other constituent document if the effect thereof, either individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

Section 6.10 Accounting Changes. The Borrower shall not make or permit any change in (i) accounting policies or reporting practices, except as required by applicable law or as otherwise in compliance with Accounting Requirements, or (ii) the last day of its fiscal year from December 31, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30, and September 30 respectively.

Section 6.11 Name, Incorporation, Location or Reporting Period Changes. The Borrower shall not make or permit any change in its corporate name or jurisdiction of incorporation or organization or its principal office location, in any case, except upon prompt written notice to the Administrative Agent.

Section 6.12 Fundamental Changes. The Borrower will not enter into any transaction of merger or consolidation or amalgamation (except to the extent (i) the Borrower is the survivor of such merger, consolidation or amalgamation, (ii) no Default exists as of the date of such merger, consolidation or amalgamation and (iii) such merger, consolidation or amalgamation would not be in violation of the Indenture), or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or dispose of all or Substantially All of its assets. The Borrower shall comply in all respects with Section 5.1 and Section 5.2 of the Indenture.

Section 6.13 Distribution to Members. The Borrower shall not directly or indirectly declare or pay any dividend or make any payments of, distributions of, or retirements of, patronage capital to its Members (each a “Distribution”) if, at the time thereof or after giving effect thereto, (i) an “Event of Default” (as such term is defined in the Indenture) shall exist, or (ii) the Borrower’s aggregate margins and equities (determined in accordance with Accounting Requirements) as of the end of the Borrower’s most recent fiscal quarter would be less than 20% of the Borrower’s total long-term debt and equities (determined in accordance with Accounting Requirements) at such time; or (iii) the aggregate amount expended for all Distributions on or after the date on which the Borrower’s aggregate margins and equities (determined in accordance with Accounting Requirements) first reached 20% of the Borrower’s long-term debt and equities (determined in accordance with Accounting Requirements) shall exceed 35% of the aggregate net margins (whether or not such net margins have since been allocated to Members) of the Borrower earned after such date (subtracting, in the case of any deficit, 100% of such deficit). Notwithstanding the foregoing and so long as no “Event of Default” (as such term is defined in the Indenture) shall exist, the Borrower may declare and make Distributions at any time if, after giving effect thereto, the Borrower’s aggregate margins and equities (determined in accordance with Accounting Requirements) as of the end of the Borrower’s most recent fiscal quarter would have been not less than 30% of the Borrower’s total long-term debt and equities (determined in accordance with Accounting Requirements) as of such date.

Section 6.14 Restrictive Agreements. The Borrower will not directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of the Borrower to create, incur or permit to exist any Lien upon any of its property or assets; provided, that:

(a) the foregoing shall not apply to restrictions and conditions imposed by any law, the Loan Documents or the Indenture; and

(b) this Section shall not apply to (i) restrictions or conditions imposed by any other agreement relating to Indebtedness permitted by this Agreement, (ii) customary provisions in non-material leases and other non-material contracts restricting the assignment thereof and (iii) customary provisions in material leases and other material contracts restricting the assignment thereof.

Section 6.15 Anti-Terrorism Laws. The Borrower shall not (a) have any of its assets in a country subject to any Sanctions or in the possession, custody or control of a person in violation of any Anti-Terrorism Laws; (b) do business in or with, or derive any of its income from investments in or transactions with, any country subject to any Sanctions or in the possession, custody or control of a person in violation of any Anti-Terrorism Laws; (c) engage in any dealings or transactions prohibited by any Anti-Terrorism Law; or (d) use the proceeds of the loans to fund any operations in, finance any investments or activities in, or make any payments to a country subject to any Sanctions or in the possession, custody or control of a person in violation of any Anti-Terrorism Laws.

## ARTICLE VII

### EVENTS OF DEFAULT

If any of the following events (“Events of Default”) shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Article) payable under this Agreement or under any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) or more Business Days; or

(c) any representation or warranty made or deemed made by or on behalf of the Borrower in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document prepared or furnished by or on behalf of the Borrower pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall prove to have been incorrect when made or deemed made (other than such representation or warranty that, by its terms, refers to a specific date, in which case such representation and warranty shall prove to have been incorrect as of such specific date); or



(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.01(a), (b) or (c), Section 5.02, Section 5.05 (with respect to the Borrower's existence), Section 5.10 or in Article VI; or

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in paragraph (a), (b) or (d) of this Article) or any other Loan Document and such failure shall continue unremedied for a period of thirty (30) or more consecutive calendar days after the earlier of (i) a Responsible Officer becoming aware thereof and (ii) notice thereof from the Administrative Agent (given at the request of any Lender) to the Borrower or, if remedial action has been taken and the Borrower is diligently pursuing a cure, such remedial action has not succeeded within an additional period of thirty (30) days after such notice; or

(f) the Borrower, after giving effect to any applicable grace periods, shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, or when and as the same shall become due and payable (whether at maturity, by acceleration or otherwise); or

(g) any event of default or similar event occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed or unvacated for a period of sixty (60) or more days or an order or decree approving or ordering any of the foregoing shall be entered; or

(i) the Borrower shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing; or

(j) the Borrower shall become unable to pay its debts as they become due, generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts as they become due; or

(k) (i) any one or more Members of the Borrower shall default in the performance of any payment obligations under its or their Wholesale Power Contracts or Direct Serve Contracts where the aggregate principal amount of such default or defaults exceeds \$10,000,000 and such default or defaults remain uncured for sixty-five or more days beyond any applicable cure period with respect thereto, if any, (ii) any one or more Members of the Borrower who, individually or in the aggregate, represent 10% or more of the Borrowers' total gross revenue as of such time shall contest the validity or enforceability of its or their Wholesale Power Contracts or Direct Serve Contracts with the Borrower by filing any official judicial or regulatory filing seeking as a remedy the declaration of the unenforceability or the material modification of its or their Wholesale Power Contracts or Direct Serve Contracts and the applicable judicial or regulatory body shall have issued a final, non-appealable order (A) in which such Member or Members substantially prevail, (B) declaring all or a material portion of such Wholesale Power Contracts or Direct Serve Contracts unenforceable or (C) modifying such Wholesale Power Contracts or Direct Serve Contracts in any material manner, or (iii) one or more of the Borrower's Wholesale Power Contracts or Direct Serve Contracts with its distribution cooperative Members which, individually or in the aggregate, represent 10% or more of the Borrowers' total gross revenue shall for any reason be terminated, other than at the end of a contract term or a voluntary termination provided for by the contract terms; or

(l) an ERISA Event shall have occurred that could reasonably be expected to result in the Borrower incurring liability or an obligation in excess of \$5,000,000; or

(m) there shall have been asserted or exist against the Borrower an Environmental Claim that, in the judgment of the Required Lenders, is reasonably likely to be determined adversely to the Borrower, and could reasonably be expected to result in a Material Adverse Effect; *provided*, that the existence of any Environmental Claim disclosed to the Lenders in writing prior to the Effective Date shall not result in the occurrence of an Event of Default under this clause (m) so long as the prosecution of such disclosed Environmental Claim does not result in either a material expansion thereof or the assertion of any new Environmental Claim; or

(n) any Loan Document shall at any time for any reason cease to be valid and binding or in full force and effect (other than upon expiration in accordance with the terms thereof), or performance of any material obligation thereunder by the Borrower shall become unlawful, or the Borrower shall so assert in writing or contest the validity or enforceability thereof; or

(o) any Security Document shall for any reason fail to create, or cease to provide for, a valid and perfected first priority Lien (except for Liens permitted by Section 6.02) on and security interest in the Collateral purported to be covered thereby or the Borrower shall so assert or shall contest the creation, perfection or priority of any Lien contemplated thereby; or

(p) one or more judgments for the payment of money in an aggregate amount in excess of \$15,000,000 (to the extent (i) not paid or insured by a carrier who has acknowledged coverage, or (ii) not fully covered by an effective, enforceable and undisputed indemnity from another creditworthy Person in favor of the Borrower with respect to such judgment(s) amount) shall be rendered against the Borrower and the same is not released, discharged, vacated, fully bonded or stayed for a period of sixty (60) consecutive calendar days after such judgment is rendered; or

(q) any permits, licenses, orders, consents, qualifications or approvals (whether from Governmental Authorities, regulatory bodies or otherwise) required or necessary by the Borrower in the conduct of its business are, singly or in the aggregate, revoked, withdrawn, cancelled or repealed which revocation, withdrawal, cancellation or repeal renders the Borrower incapable, in any material respect, of carrying on its business; or

(r) any “Event of Default” (as such term is defined in the Indenture) (or its equivalent successor term) has occurred and is continuing;

then, and in every such event, subject in all cases to the last sentence of this paragraph, any of the following actions may be taken: (i) the Administrative Agent may, or at the request of the Required Lenders, shall, (A) terminate any unused Commitments and cease making Credit Extensions hereunder, (B) enforce any and all rights and remedies as may be provided by this Agreement, any other Loan Document, or under applicable law, including but not limited to a suit for specific performance, injunctive relief or damages, or (C) exercise rights of setoff or recoupment and application against the Borrower’s obligations to the Lenders then due and payable any cash held by the Administrative Agent or any Lender, or any other balances held by the Administrative Agent or any Lender for the Borrower’s account (whether or not such balances are then due); or (ii) if such event is also an Event of Default specified in the Indenture with respect to the Borrower, the Lenders, as Holders of “Obligations” under the Indenture, shall have the rights and remedies set forth in the Indenture; *provided*, that in the case of any event with respect to the Borrower described in paragraph (h) or (i) of this Article VII, the Commitments shall automatically terminate. Each of such rights and remedies shall be cumulative and may be exercised from time to time, and no failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right or remedy shall preclude any other future exercise thereof, or the exercise of any other right. The Loans may only be accelerated as provided in, and subject to the terms of, the Indenture.

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT

Section 8.01 Appointment and Authority. Each of the Lenders and the Issuing Lender hereby irrevocably appoints National Rural Utilities Cooperative Finance Corporation to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and the Borrower shall not have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 8.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 8.03 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that (A) the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law and (B) the Administrative Agent’s duties with respect to any direction by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) regarding the taking of any enforcement or other action under the Security Documents shall be fully satisfied upon the notification by the Administrative Agent to the Trustee of such direction; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.02 and Article

VII), or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent in writing by the Borrower, a Lender or the Issuing Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 8.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 8.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with syndication of the facilities hereunder as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### Section 8.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

Section 8.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such

documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 8.08 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Lead Arranger, Co-Syndication Agents or Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Lender hereunder.

Section 8.09 Indemnity.

(a) Each Lender severally agrees to indemnify the Administrative Agent (to the extent not promptly reimbursed by the Borrower) from and against such Lender's Applicable Percentage of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, the "Indemnified Costs"); provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments' suits, costs, expenses or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrower under Section 9.03, to the extent that the Administrative Agent is not promptly reimbursed for such costs and expenses by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Article VIII applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person.

(b) Each Lender severally agrees to indemnify the Issuing Lender (to the extent not promptly reimbursed by the Borrower) from and against such Lender's Applicable Percentage of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Issuing Lender in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Issuing Lender under the Loan Documents; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Issuing Lender's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Issuing Lender promptly upon demand for its ratable share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable

by the Borrower under Section 9.03, to the extent that the Issuing Lender is not promptly reimbursed for such costs and expenses by the Borrower.

(c) The failure of any Lender to reimburse the Administrative Agent or the Issuing Lender, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent or the Issuing Lender, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent or the Issuing Lender, as the case may be, for their ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent or the Issuing Lender, as the case may be, for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Article VIII shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

**Section 8.10 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposure and all other obligations that are owing and unpaid under the Loan Documents and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lender and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lender and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lender and the Administrative Agent under Sections 2.10 and 9.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

(c) and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 9.03.

## ARTICLE IX

### MISCELLANEOUS

#### Section 9.01 Notices.



(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic communication as follows:

(i) if to the Borrower, to it at Big Rivers Electric Corporation, 201 Third Street, P.O. Box 24, Henderson, Kentucky 42419-0024, Attention: Chief Financial Officer, (Facsimile No. (270) 827-2558; Telephone No. (270) 827-2561; E-mail [Lindsay.Barron@bigrivers.com](mailto:Lindsay.Barron@bigrivers.com), with a copy to [Bob.Berry@bigrivers.com](mailto:Bob.Berry@bigrivers.com);

(ii) if to the Administrative Agent, to National Rural Utilities Cooperative Finance Corporation, 20701 Cooperative Way, Dulles, VA 20166, Attention: Administrative Agent (Facsimile No. (703) 467-5681; Telephone No. (703) 467-1615; E-mail: [loansyndications@nrucfc.coop](mailto:loansyndications@nrucfc.coop));

(iii) if to the Issuing Lender, to National Rural Utilities Cooperative Finance Corporation, 20701 Cooperative Way, Dulles, VA 20166, Attention: Administrative Agent (Facsimile No. (703) 467-5681; Telephone No. (703) 467-1615; E-mail: [loansyndications@nrucfc.coop](mailto:loansyndications@nrucfc.coop));

(iv) if to the Swingline Lender, to National Rural Utilities Cooperative Finance Corporation, 20701 Cooperative Way, Dulles, VA 20166, Attention: Administrative Agent (Facsimile No. (703) 467-5681; Telephone No. (703) 467-1615; E-mail: [loansyndications@nrucfc.coop](mailto:loansyndications@nrucfc.coop)); and

(v) if to a Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications due to the use of the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent, any Lender or the Issuing Lender by means of electronic communications pursuant to this Section, including through the Platform.

#### Section 9.02 Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay by the Administrative Agent, the Issuing Lender or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power,

preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Lender and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Lender may have had notice or knowledge of such Default at the time.

(b) Amendments. None of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall

(i) increase the Commitment of any Lender without the written consent of such Lender,

(ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees or other amounts payable hereunder, without the written consent of each Lender affected thereby,

(iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby,

(iv) change Section 2.16(b), Section 2.16(c) and Section 2.16(d) without the consent of each Lender affected thereby,

(v) change any of the provisions of this Section or the percentage in the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(vi) amend, modify, waive or change any provision of Section 4.02 without the prior written consent of each Lender; and

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Lender or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Lender or the Swingline Lender, as the case may be. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver, modification or consent hereunder, except that the Commitment of such Lender may not be

increased or extended without such Lender's consent (and such Lender's Commitment shall be excluded from a vote of the Lenders hereunder requiring any consent of the Lenders).

For purposes of this Section, the "scheduled date of payment" of any amount shall refer to the date of payment of such amount specified in this Agreement, and shall not refer to a date or other event specified for the mandatory or optional prepayment of such amount.

Section 9.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the facilities hereunder, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Lender (including the reasonable fees, charges and disbursements of a one special counsel and one local counsel for the Administrative Agent, all the Lenders and the Issuing Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Except for situations where the advice of local counsel or special counsel is reasonably required and the Borrower's consent has been obtained (such consent not to be unreasonably withheld or delayed), the Administrative Agent shall limit the use of external law firms to one law firm, with respect to reviewing, negotiating and preparing documents related to amendments, consents, waivers or modifications to the Loan Documents that are requested by the Borrower.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all fees and time charges and disbursements for outside counsel, incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on

or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 9.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, such Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the total Credit Exposures at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Issuing Lender or such Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such Issuing Lender or any such Swingline Lender in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.02(a).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and shall cause its Related Parties not to assert, and hereby waives, and shall cause its Related Parties to waive, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. To the extent permitted by applicable law, the Administrative Agent and each Lender shall not assert, and shall cause its Related Parties not to assert, and hereby waives, and shall cause its Related Parties to waive, any claim against the Borrower, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any breach by the Borrower of any payment obligation under the Loan Documents as to the principal or interest owed in respect of any loans or any fees payable under this Agreement; provided, however, that the foregoing shall not be construed to limit or obviate in any manner any obligation of the Borrower to pay fees, costs or other

payments expressly provided for in this Agreement, such as default interest and break funding costs. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after written demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

#### Section 9.04 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (e) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (e) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the

principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment under this Section 9.04(b) except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof and provided, further, that the Borrower’s consent shall not be required during the primary syndication of the revolving facility hereunder;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required in respect of any assignment to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the Issuing Lender and the Swingline Lender shall be required in respect of any assignment to a Person that is not a Lender (such consent not to be unreasonably withheld or delayed).

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower’s Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.13, 2.14, 2.15 and 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (e) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Dulles, Virginia a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.



(d) Acceptance of Assignments by Administrative Agent. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section, any written consent to such assignment required by paragraph (b) of this Section and any other document reasonably requested by the Administrative Agent, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lender and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 2.15(e) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 (subject to the requirements and limitations therein, including the requirements under Section 2.15(g) (it being understood that the documentation required under Section 2.15(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.17 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.13 or 2.15, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.17(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.16(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that

no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.05 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Lender or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.13, 2.14, 2.15, 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic

(i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 9.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender, the Issuing Lender or any such Affiliate, to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the Issuing Lender or their respective Affiliates, irrespective of whether or not such Lender, Issuing Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the Issuing Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.19 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender, and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations of the Borrower owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender or their respective Affiliates may have. Each Lender and the Issuing Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 9.09 Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Jurisdiction. The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, the Issuing Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender or the Issuing Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. The Borrower hereby irrevocably appoints CT Corporation System, with offices as of the date of this Agreement at 111 8th Avenue, 13th Floor, New York, New York 10011, as its authorized agent for service of process in relation to any action, suit or proceeding before any courts located in the State of New York in connection with this Agreement and all other Loan Documents, and the Borrower agrees that service of process in respect of it to CT Corporation System shall be effective service of process upon it in such action, suit or proceeding. The Borrower further agrees that any failure of CT Corporation System to give notice to the Borrower of any such service shall not impair or affect the validity of such service of any judgment rendered in any such action, suit or proceeding. Each other party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12 Treatment of Certain Information; Confidentiality.

(a) Treatment of Certain Information. The Borrower acknowledges that from time to time financial advisory, investment banking and other services may be offered or provided to the Borrower or one or more of its Subsidiaries (in connection with this Agreement or otherwise) by any Lender or by one or more Subsidiaries or Affiliates of such Lender and the Borrower hereby authorizes each Lender to share any information delivered to such Lender by the Borrower and its Subsidiaries pursuant to this Agreement, or in connection with the decision of such Lender to enter into this Agreement, to any such Subsidiary or Affiliate, it being understood that any such Subsidiary or Affiliate receiving such information shall be bound by the provisions of paragraph (b) of this Section as if it were a Lender hereunder. Such authorization shall survive the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

(b) Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or

prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Administrative Agent, the applicable Lender or the Issuing Lender, as applicable, or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the revolving facility hereunder; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or a Related Party.

For purposes of this Section, “Information” means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 9.13 USA Patriot Act. Each Lender subject to the Patriot Act hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

Section 9.14 Transaction Titles. Notwithstanding anything herein to the contrary, the party identified on the cover page hereof as the Arranger shall not have any duties or liabilities under this Agreement, except in its capacity as a Lender, Issuing Lender, Swingline Lender and Administrative Agent.

Section 9.15 No Fiduciary Duty. The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lender Parties”), may have economic interests that conflict with those of the Borrower, its stockholders and/or its Affiliates. The Borrower agrees that, except as set forth in Section 9.04(c), nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender Party, on the one hand, and the Borrower, its stockholders or its Affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lender Parties, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender Party has assumed an advisory or fiduciary responsibility in favor of the Borrower, its stockholders or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process


leading thereto (irrespective of whether any Lender Party has advised, is currently advising or will advise the Borrower, its stockholders or its Affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender Party is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transactions or the process leading thereto.

Section 9.16 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

*[signature pages follow]*

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

BIG RIVERS ELECTRIC CORPORATION,  
as Borrower

By:   
Name: Robert W. Berry  
Title: President and CEO



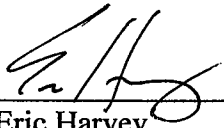
NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE  
CORPORATION, as Administrative Agent,  
Issuing Lender, Swingline Lender and a  
Lender

By: 

Name: J. Andrew Don

Title: Senior Vice President & CFO

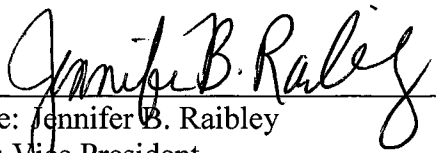
REGIONS BANK, as Syndication Agent and a  
Lender

By:  \_\_\_\_\_  
Name: Eric Harvey  
Title: Vice President

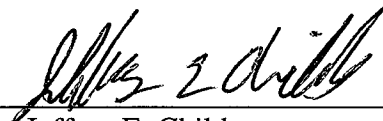
KEYBANK NATIONAL ASSOCIATION, as  
a Lender

By: Sherrie I. Manson  
Name: Sherrie I. Manson  
Title: Senior Vice President

FIFTH THIRD BANK, as a Lender

By:   
Name: Jennifer B. Raibley  
Title: Vice President

COBANK, ACB, as a Lender

By:   
Name: Jeffrey E. Childs  
Title: Vice President

## SCHEDULE I

### Commitments

<b>Name of Lender</b>	<b>Commitment Amount</b>	<b>Applicable Percentage</b>
National Rural Utilities Cooperative Finance Corporation	\$35,000,000.00	26.923076923%
Regions Bank	\$30,000,000.00	23.076923077%
KeyBank National Association	\$25,000,000.00	19.230769231%
Fifth Third Bank	\$25,000,000.00	19.230769231%
CoBank, ACB	\$15,000,000.00	11.538461538%
<b>Total</b>	<b>\$130,000,000.00</b>	<b>100.000000000%</b>

## SCHEDULE II

### Material Agreements and Liens

#### **A. Material Agreements**

1. Indenture dated as of July 1, 2009, First Mortgage Obligations from Big Rivers Electric Corporation to U.S. Bank National Association, Trustee.
2. First Supplemental Indenture dated as of June 1, 2010, relating to the issuance of the Big Rivers Electric Corporation First Mortgage Note, Series 2010A from Big Rivers Electric Corporation to U.S. Bank National Association, Trustee (“Trustee”) in the principal amount of \$83,300,000 and payable to the Trustee.
3. Second Supplemental Indenture dated as of July 15, 2012, relating to the issuance of the Big Rivers Electric Corporation First Mortgage Note, Series 2012A from Big Rivers Electric Corporation to CoBank, ACB (“CoBank”) in the principal amount of \$235,000,000 and payable to CoBank.
4. Third Supplemental Indenture dated as of July 15, 2012, relating to the issuance of the Big Rivers Electric Corporation First Mortgage Note, Series 2012B from Big Rivers Electric Corporation to National Rural Utilities Cooperative Finance Corporation (“CFC”) in the principal amount of \$302,000,000 and payable to CFC.
5. Fourth Supplemental Indenture dated as of August 14, 2013, relating to the Big Rivers Electric Corporation First Mortgage Notes, Series 2013A from Big Rivers Electric Corporation to the National Rural Utilities Cooperative Finance Corporation (“CFC”) in the principal amount of \$50,000,000, or such lesser sum of the aggregate unpaid principal amount of all advances made pursuant to the Amended and Restated Revolving Line of Credit Agreement between Big Rivers Electric Corporation, as Borrower, and CFC dated August 19, 2013.
6. Fifth Supplemental Indenture dated as of February 23, 2015, relating to the Big Rivers Electric Corporation Secured Promissory Notes dated March 5, 2015 from Big Rivers Electric Corporation to National Rural Utilities Cooperative Finance Corporation and the several other Lenders party to the Senior Secured Credit Agreement dated March 5, 2015.
7. Loan Agreement, dated as of June 1, 2010, between Big Rivers Electric Corporation and the County of Ohio, Kentucky, relating to a loan in the amount of \$83,300,000 evidenced by the First Mortgage Note, Series 2010A.
8. Amended and Consolidated Loan Contract dated as of July 16, 2009, between Big Rivers Electric Corporation and United States of America.

9. RUS 2009 Promissory Note Series A, dated July 16, 2009, made by Big Rivers Electric Corporation to the United States of America, in the principal amount of \$602,573,536, maturing on July 1, 2021.
10. RUS 2009 Promissory Note Series B, dated July 16, 2009, made by Big Rivers Electric Corporation to the United States of America, in the amount at final maturity of \$245,530,257.30, maturing December 31, 2023.
11. Loan Agreement dated July 27, 2012 between Big Rivers Electric Corporation (“Big Rivers”) and National Rural Utilities Cooperative Finance Corporation (“CFC”), relating to a loan in the amount of \$302,000,000 evidenced by the First Mortgage Notes, Series 2012B, and a loan in the amount of \$43,155,800 (the “Equity Loan”) evidenced by the Promissory Note dated July 27, 2012.
12. Secured Credit Agreement dated July 24, 2012 between Big Rivers Electric Corporation, the several lenders from time to time parties thereto, and CoBank, ACB, relating to a loan in the amount of \$235,000,000 evidenced by the First Mortgage Notes, Series 2012A.
13. Amended and Restated Revolving Line of Credit Agreement, dated as of August 19, 2013, between Big Rivers Electric Corporation, as Borrower, and National Rural Utilities Cooperative Finance Corporation (“CFC”)<sup>1</sup>
14. Senior Secured Credit Agreement dated March 5, 2015 among Big Rivers Electric Corporation, as Borrower, and National Rural Utilities Cooperative Finance Corporation (“CFC”) as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender evidenced by the Secured Promissory Notes dated March 5, 2015.

## **B. Liens**

1. Indenture dated as of July 1, 2009, First Mortgage Obligations from Big Rivers Electric Corporation to U.S. Bank National Association, Trustee.
2. First Supplemental Indenture dated as of June 1, 2010, relating to the issuance of the Big Rivers Electric Corporation First Mortgage Note, Series 2010A from Big Rivers Electric Corporation to U.S. Bank National Association, Trustee (“Trustee”) in the principal amount of \$83,300,000 and payable to the Trustee.
3. Second Supplemental Indenture dated as of July 15, 2012, relating to the issuance of the Big Rivers Electric Corporation First Mortgage Note, Series 2012A from Big Rivers Electric Corporation to CoBank, ACB (“CoBank”) in the principal amount of \$235,000,000 and payable to CoBank.

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<sup>1</sup> Amended and Restated Revolving Line of Credit Agreement, dated as of August 19, 2013, will be terminated with the effective date of the 2015 Senior Secured Credit Agreement between Big Rivers Electric Corporation, the Lenders party thereto, Regions Bank, as Syndication Agent, and CFC, as Lead Arranger, Issuing Lender, Singline Lender and Administrative Agent.



4. Third Supplemental Indenture dated as of July 15, 2012, relating to the issuance of the Big Rivers Electric Corporation First Mortgage Note, Series 2012B from Big Rivers Electric Corporation to National Rural Utilities Cooperative Finance Corporation (“CFC”) in the principal amount of \$302,000,000 and payable to CFC.
5. Fourth Supplemental Indenture dated as of August 14, 2013, relating to the Big Rivers Electric Corporation First Mortgage Notes, Series 2013A from Big Rivers Electric Corporation to the National Rural Utilities Cooperative Finance Corporation (“CFC”) in the principal amount of \$50,000,000, or such lesser sum of the aggregate unpaid principal amount of all advances made pursuant to the Amended and Restated Revolving Line of Credit Agreement between Big Rivers Electric Corporation, as Borrower, and CFC dated August 19, 2013.
6. Fifth Supplemental Indenture dated as of February 23, 2015, relating to the Big Rivers Electric Corporation Secured Promissory Notes dated March 5, 2015 from Big Rivers Electric Corporation to National Rural Utilities Cooperative Finance Corporation and the several other Lenders party to the Senior Secured Credit Agreement dated March 5, 2015.
7. Statutory first Lien of CoBank, ACB pursuant to the Farm Credit Act of 1971 on all CoBank Equities that Big Rivers Electric Corporation may now own or hereafter acquire, per the Loan Agreement dated July 24, 2012 between Big Rivers Electric Corporation, the several lenders from time to time parties thereto, and CoBank ACB.
8. National Rural Utilities Cooperative Finance Corporation’s (“CFC”) security interest in Big Rivers Electric Corporation’s investments in CFC Capital Term Certificates, with an issue date of July 27, 2012, against payment defaults under the Equity Loan.

### **SCHEDULE III**

#### **Subsidiaries and Affiliates**

None.

## SCHEDULE IV

### Wholesale Power Contracts

#### **Material Wholesale Power Contracts**

1. Wholesale Power Contract Agreement – Federated Cooperative dated June 11, 1962 between Big Rivers Rural Electric Cooperative Corporation and Green River Rural Electric Cooperative Corp.<sup>2</sup>
2. Amendment dated December 15, 1975 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Green River Electric Corporation.<sup>1</sup>
3. Amendment 3 dated May 9, 1980 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Green River Electric Corporation.<sup>1</sup>
4. Amendment dated July 15, 1998 to Wholesale Power Agreements dated October 12, 1974, and June 11, 1962, between Big Rivers Electric Corporation and Green River Electric Corporation.<sup>1</sup>
5. Wholesale Power Contract – Federated Cooperative dated June 11, 1962 between Big Rivers Rural Electric Cooperative Corporation and Henderson Union Rural Electric Coop. Corp.<sup>1</sup>
6. Amendment dated December 15, 1975 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Henderson-Union Rural Electric.<sup>1</sup>
7. Amendment 4 dated May 9, 1980 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Henderson-Union Rural Electric Cooperative Corporation.<sup>1</sup>
8. Amendment dated July 15, 1998 to Wholesale Power Agreements dated October 12, 1974, and June 11, 1962, between Big Rivers Electric Corporation and Henderson Union Electric Cooperative Corp.<sup>1</sup>
9. System Disturbance Agreement dated April 4, 2001 between Big Rivers Electric Corporation, Kenergy Corp., Willamette Industries, Inc., WKE Station Two Inc., formally known as LG&E Station Two Inc., and Western Kentucky Energy Corp., as amended by the Release Agreement dated July 16, 2009.

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<sup>2</sup> Green River Electric Corporation and Henderson Union Electric Cooperative Corp. merged and consolidated into Kenergy Corp. effective July 1, 1999.

10. Amendment dated July 6, 2009 to Wholesale Power Contracts dated June 11, 1962 between Big Rivers Electric Corporation and Kenergy Corp.
11. Amendment dated August 1, 2009 to Wholesale Power Contracts dated June 11, 1962 between Big Rivers Electric Corporation and Kenergy Corp.
12. Wholesale Power Contract dated October 14, 1977 between Big Rivers Electric Corporation and Jackson Purchase Rural Electric Cooperative Corporation.
13. Letter agreement dated October 14, 1977 between Big Rivers Electric Corporation and Jackson Purchase Rural Electric Cooperative Corporation.
14. Supplemental Agreement dated October 14, 1977 between Big Rivers Electric Corporation and Jackson Purchase Rural Electric Cooperative Corporation.
15. Amendment 1 dated May 9, 1980 to Wholesale Power Contract dated October 14, 1977 between Big Rivers Electric Corporation and Jackson Purchase Rural Electric Cooperative Corporation.
16. Amendment No. 2 dated July 6, 2009 to Wholesale Power Contract dated October 14, 1977 between Big Rivers Electric Corporation and Jackson Purchase Rural Electric Cooperative Corporation.
17. Amendment No. 3 dated August 1, 2009 to Wholesale Power Contract dated October 14, 1977 between Big Rivers Electric Corporation and Jackson Purchase Rural Electric Cooperative Corporation.
18. Wholesale Power Contract – Federated Cooperative dated June 11, 1962 between Big Rivers Rural Electric Cooperative Corporation and Meade County Rural Electric Coop. Corp.
19. Supplemental Agreement dated June 8, 1962 between Big Rivers Rural Electric Generating and Transmission Cooperative Corp. and Meade County Rural Electric Cooperative Corp.
20. Amendment dated December 15, 1975 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation.
21. Amendment 2 dated May 9, 1980 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation.
22. Amendment No. 3 dated July 6, 2009 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation.

23. Amendment No. 4 dated August 1, 2009 to Wholesale Power Contract dated June 11, 1962 between Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation.

**Material Direct Serve Contracts**

24. Letter Agreement dated May 20, 2011 between Big Rivers Electric Corporation and Kenergy Corp. (Aleris Rolled Products, Inc.).
25. Second Amended and Restated Wholesale Power Agreement dated January 21, 2011 between Big Rivers Electric Corporation and Kenergy Corp. (Domtar).
26. Letter agreement dated December 9, 2008 between Big Rivers Electric Corporation and Kenergy Corp. (Kimberly-Clark).
27. Delivery Point Agreement dated July 1, 2009 between and among Kenergy Corp., Big Rivers Electric Corporation, Southwire Company, and Century Aluminum of Kentucky General Partnership.

## SCHEDULE V

***Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light***, Henderson Circuit Court Civil Action No. 09-CI-00693; ***City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light v. Big Rivers Electric Corporation***, Kentucky Court of Appeals No. 2010-CA-000120-MR; ***Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light***, Kentucky Supreme Court No. 2014-SC-000595; ***Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light***, American Arbitration Association Case No. 52 198 000173 10.

Big Rivers filed suit in Henderson, Kentucky, Circuit Court on July 31, 2009, requesting an order referring to arbitration a dispute with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “HMP&L”) regarding the rights of the parties respecting “Excess Henderson Energy” as defined in the contracts by which Big Rivers operates HMP&L’s Station Two and receives a portion of the generation output of Station Two. By agreement dated as of July 16, 2009, Western Kentucky Energy Corp. indemnified Big Rivers against certain adverse consequences of failing to prevail in the arbitration with HMP&L. The obligations of Western Kentucky Energy Corp. are guaranteed by its parent company, E.ON U.S. LLC, and its successor in interest. The order of the Henderson Circuit Court directing arbitration was appealed to the Kentucky Court of Appeals, which found that the circuit court order was non-final and non-appealable, and dismissed the appeal for want of appellate jurisdiction. The contractual dispute was submitted to the American Arbitration Association.

The arbitration panel issued an award on May 31, 2012, essentially adopting the HMP&L position in the arbitration. Big Rivers filed a motion on July 16, 2012, in the Henderson Circuit Court asking the court to vacate the arbitrators’ award. The judge ruled against Big Rivers on December 5, 2012. Big Rivers filed a notice of appeal to the Kentucky Court of Appeals on January 2, 2013. The Court of Appeals upheld the lower court. Big Rivers has asked the Kentucky Supreme Court to grant discretionary review of the case.

Counsel for HMP&L wrote counsel for Big Rivers on June 26, 2012, asserting that Big Rivers owes HMP&L for fixed costs associated with energy Big Rivers had taken from HMP&L’s “reserve capacity for the period beginning in August 2009 to the date of the award May 30, 2012.” The amount claimed by HMP&L in that letter is \$3,753,013.09. Since June 26, 2012, HMP&L has taken no legal steps to pursue that claim or any other claim for damages that it may be contemplating against Big Rivers based upon the arbitration award.

## **SCHEDULE VI**

### **Investments**

None.

## **SCHEDULE VII**

### **Certain Material Events**

None.



## EXHIBIT A

### [Form of Assignment and Assumption]

#### ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]<sup>1</sup> Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]<sup>2</sup> Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>3</sup> hereunder are several and not joint.]<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including without limitation any letters of credit and swingline loans included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to

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<sup>1</sup> For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

<sup>2</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>3</sup> Select as appropriate.

<sup>4</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

[the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_ [Assignor [is] [is not] a Defaulting Lender]

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_ [for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrower: Big Rivers Electric Corporation

4. Administrative Agent: National Rural Utilities Cooperative Finance Corporation, as the administrative agent under the Credit Agreement

5. Credit Agreement: The Credit Agreement dated as of March 5, 2015 among Big Rivers Electric Corporation, the Lenders parties thereto, National Rural Utilities Cooperative Finance Corporation, as Administrative Agent, and the other agents parties thereto

6. Assigned Interest[s]:

Assignor[s] <sup>5</sup>	Assignee[s] <sup>6</sup>	Aggregate Amount of Commitment / Loans for all Lenders <sup>7</sup>	Amount of Commitment / Loans Assigned <sup>8</sup>	Percentage Assigned of Commitment / Loans <sup>8</sup>
		\$	\$	%
		\$	\$	%
		\$	\$	%

[7. Trade Date: \_\_\_\_\_]<sup>9</sup>

<sup>5</sup> List each Assignor, as appropriate.

<sup>6</sup> List each Assignee, as appropriate.

<sup>7</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>8</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>9</sup> To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: \_\_\_\_\_, 20\_\_\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S]<sup>10</sup>  
[NAME OF ASSIGNOR]

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

[NAME OF ASSIGNOR]

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

ASSIGNEE[S]<sup>11</sup>  
[NAME OF ASSIGNEE]

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

[NAME OF ASSIGNEE]

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

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<sup>10</sup> Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

<sup>11</sup> Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

[Consented to and]<sup>12</sup> Accepted:

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, as  
Administrative Agent, Issuing Lender and Swingline Lender

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

[Consented to:]<sup>13</sup>

[BIG RIVERS ELECTRIC CORPORATION]

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

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<sup>12</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>13</sup> To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 9.04(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 9.04(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not

taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**EXHIBIT B-1**

FORM OF OPINION OF COUNSEL TO THE BORROWER

*[See Attached]*

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC  
ATTORNEYS AT LAW

Ronald M. Sullivan

Jesse T. Mountjoy

Frank Stainback

James M. Miller

Michael A. Fiorella

R. Michael Sullivan

Bryan R. Reynolds\*

Tyson A. Kamuf

Mark W. Starnes

C. Ellsworth Mountjoy

John S. Wathen

March 5, 2015

National Rural Utilities  
Cooperative Finance Corporation,  
as Administrative Agent, Lead Arranger,  
Issuing Lender and Swingline Lender  
20701 Cooperative Way  
Dulles, VA 20166

\*Also Licensed in Indiana

Regions Bank, as Syndication Agent, and  
the Lenders party to the Credit Agreement  
referred to below

Re: Big Rivers Electric Corporation Senior Secured Credit Agreement

Ladies and Gentlemen:

I. Introduction

We have served as outside counsel for Big Rivers Electric Corporation, a Kentucky rural electric cooperative corporation (the "Borrower"), in connection with the Senior Secured Credit Agreement dated as of March 5, 2015 (the "Credit Agreement"), by and among the Borrower, the Lenders parties thereto, National Rural Utilities Cooperative Finance Corporation as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender, and Regions Bank as Syndication Agent. Capitalized terms used in this letter but not otherwise defined herein shall have the respective meanings assigned to them in the Credit Agreement.

II. Scope of Opinion/Examination of Documents

We are delivering this opinion to you pursuant to Section 4.01(a)(vi) of the Credit Agreement. For purposes of this opinion, we have examined the following:

- A. Originals or copies identified to our satisfaction of the Credit Agreement, the Secured Promissory Notes, and the Fifth Supplemental Indenture (collectively, the "Loan Documents") executed and delivered by the Borrower;
- B. The Articles of Incorporation and Bylaws of the Borrower, in each case as amended and in effect at the time of the authorization of, and the execution and delivery by the Borrower of, the Loan Documents;

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100 St. Ann Building  
PO Box 727  
Owensboro, Kentucky  
42302-0727

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- C. Certified resolutions of the Board of Directors of the Borrower evidencing the corporate proceedings taken to authorize the execution and delivery of, and the performance by the Borrower of its obligations under, the Loan Documents;
- D. Written information provided by governmental authorities of the Commonwealth of Kentucky as to the incorporation and existence of the Borrower in the Commonwealth of Kentucky;
- E. Schedule II to the Credit Agreement (the "Material Agreements and Liens Schedule"), which the Borrower has represented is a complete and correct list, as of the Effective Date, of: (i) each lease, deed of trust, mortgage, credit agreement, loan agreement, indenture, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness, which individually exceeds \$10,000,000, outstanding on the date hereof; and (ii) each Lien securing Indebtedness which individually exceeds \$10,000,000, outstanding on the date hereof and covering any property of the Borrower, and the aggregate Indebtedness secured (or that may be secured) by each such Lien;
- F. Originals, or copies identified to our satisfaction, of the agreements and instruments identified in the Material Agreements and Liens Schedule;
- G. A certificate of the Borrower, dated as of even date herewith and a copy of which is attached hereto (the "Litigation Certificate"), certifying that Schedule V to the Credit Agreement (the "Litigation Schedule") is a complete and correct list, as of the Effective Date, of actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that question the validity or enforceability of the Credit Agreement, any of the other Loan Documents, or the Transactions;
- H. The UCC Financing Statements, naming the Borrower as Debtor and U.S. Bank as Secured Party, filed in the office of the Secretary of State of the Commonwealth of Kentucky (the "Filing Office") and listed on Exhibit A hereto (the "Financing Statements");
- I. The Indenture between the Borrower, as grantor, and U.S. Bank, as trustee, dated as of July 1, 2009, as amended by that certain (i) First Supplement to Indenture, dated as of June 1, 2010, (ii) Second Supplement to Indenture, dated as of July 15, 2012, (iii) Third Supplement to Indenture, dated as of July 15, 2012, (iv) Fourth Supplemental Indenture, dated as of August 14, 2013, and (v) Fifth Supplemental Indenture (collectively, the "Indenture");

- J. The results of searches, as of the search dates and times set forth on Exhibit B, for tax and judgment liens against the Borrower and UCC financing statements naming the Borrower as Debtor (the "Lien Search Results"), attached hereto as Exhibit B; and
- K. Such other certificates, documents and papers as we have deemed advisable in connection with this opinion.

During the course of such examination, we have assumed that all signatures, other than those of officers of the Borrower, are genuine, that all documents submitted to us as copies conform to the originals, and that all documents submitted to us as originals are authentic.

As to matters of fact involved in this opinion we have relied on statements of fact made in the Loan Documents, the Material Agreements and Liens Schedule, and the Litigation Certificate, and on certificates, affidavits and statements of fact of officials, officers or authorized representatives of the particular governmental authority or other person or entity concerned, including the Borrower, and on discussions with representatives of the Borrower, without any independent investigation or inquiry. None of the individual attorneys in the Firm who has represented the Borrower in connection with the execution and delivery of the Loan Documents or who regularly represents the Borrower is aware of any fact that would make any such reliance unreasonable. We have undertaken such investigation of the law and such consideration of the facts (which we have ascertained as described herein) as we, in our professional judgment, have determined appropriate for purposes of rendering this opinion.

For purposes of this opinion, we have further assumed that each party to the Loan Documents, other than the Borrower, has all requisite power and authority to enter into such agreements, has taken all necessary action to execute and deliver such agreements and can affect the transactions contemplated therein without contravening any law or regulation; that each of the Loan Documents constitutes the legal, valid and binding obligation of each of such other parties enforceable against such other parties in accordance with its respective terms; and that each of such other parties will duly perform its obligations under each such agreement.

### III. Opinions & Qualifications

Based on the foregoing, we are of the opinion, subject to the qualifications set forth in this letter, that:

- A. The Borrower is a rural electric cooperative corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky, and is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary.

- B. The Borrower has all requisite corporate and legal power and authority to own and operate its assets and to carry on its business as it is now being conducted and to enter into and perform its obligations under the Loan Documents.
- C. All corporate proceedings of the Borrower necessary to be taken in connection with the authorization, execution and delivery by the Borrower of, and the performance by the Borrower of its obligations under, the Loan Documents have been duly taken and all such authorizations are presently in effect.
- D. To the extent reasonably required for the maintenance and operation of its properties and business taken as a whole, the Borrower has complied with all requirements of the laws of all states in which it operates and does business, and, to the extent reasonably required to enable the Borrower to engage in the business currently transacted by it, the Borrower holds all certificates, licenses, consents or approvals of governmental entities required to be obtained on or prior to the date of this opinion.
- E. Each Loan Document has been duly executed and delivered by the Borrower.
- F. The Indenture creates a validly recorded, filed and perfected first priority mortgage lien shared pari passu and pro rata by the Holders (as defined in the Indenture) on all of the Borrower's real property included in the Trust Estate (as defined in the Indenture), including without limitation all real property of the Borrower situated in Kentucky and acquired after the date of delivery of the Indenture, securing the Borrower's obligations under the Indenture, subject and subordinate only to Permitted Exceptions (as defined in the Indenture) and the liens permitted by Section 13.6 of the Indenture. No other recordation, filing, re-recording or re-filing is necessary to maintain the validity or priority of the lien on such real property created by the Indenture, including without limitation after-acquired property and obligations evidenced by the Secured Promissory Notes (each an Additional Obligation, as such term is defined in the Indenture) executed and delivered after the date of the Indenture, except as follows. Because the Borrower caused the Fifth Supplemental Indenture to be recorded in the office of the county clerk of the counties in which the Indenture was first recorded before the Additional Obligations were issued, the lien of the Indenture secures the Additional Obligations evidenced by the Secured Promissory Notes and the priority of the lien with respect thereto dates back to the recordation of the Indenture.

The opinion set forth in this paragraph III. F. is subject to the qualification that no opinion is expressed with respect to (i) the title to or the rights or interests of the Borrower in any real or personal property, or (ii) the adequacy of the description of any real property.

- G. The Indenture creates in favor of the Holders a valid security interest in the Borrower's interest in the fixtures included in the Trust Estate and located in the

Commonwealth of Kentucky and in the personal property included in the Trust Estate in which a security interest may be validly created under Article 9 of the Uniform Commercial Code as in effect in the Commonwealth of Kentucky (the "Kentucky UCC"). Such security interest has been validly perfected in such fixtures and personal property in which a security interest may be perfected by filing a financing statement in accordance with Article 9 of the Kentucky UCC. No filings, recordings or similar actions, other than the filing of the Financing Statements, are necessary under the laws of the Commonwealth of Kentucky in order to establish or continue perfection of such security interest.

The opinion set forth in this paragraph III. G. is subject to the following qualifications: (i) no opinion is expressed with respect to the Borrower's title to or rights or interest in any personal property; and (ii) with respect to the validity and the perfection of the security interests in personal property created under the Indenture, this opinion does not address personal property of a type in which a security interest cannot be validly created under Article 9 of the Kentucky UCC, or in which a security interest can be validly created but cannot be perfected under Article 9 of the Kentucky UCC by filing of a financing statement.

- H. The Lien Search Results as defined above in paragraph II. J. set forth the proper filing office(s) and the proper name of the debtor necessary to identify tax liens and judgment liens against the Borrower and those persons who, as of the effective dates noted in the Lien Search Results, have financing statements on file against the Borrower indicating the existence of a security interest in any personal property or fixtures in which a security interest may be perfected by filing under Article 9 of the Kentucky UCC.
- I. The execution and delivery by the Borrower of, and the performance by the Borrower of its obligations under, the Loan Documents do not and will not: (a) violate the Borrower's Articles of Incorporation or Bylaws; (b) violate any applicable law, rule or regulation to which the Borrower is subject; (c) conflict with, result in a breach of, or constitute with notice or lapse of time or both a default under, any agreement or instrument identified in the Material Agreements and Liens Schedule; or (d) violate any judicial or administrative decree, writ, judgment or order to which, to our knowledge, the Borrower is subject.
- J. All authorizations from governmental entities required in connection with the execution and delivery by the Borrower of, and the performance by the Borrower of its obligations under, the Loan Documents have been obtained and are in full force and effect.
- K. To our knowledge and in reliance solely on the Litigation Certificate, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or threatened against or affecting the Borrower (i) as to which there is a reasonable possibility of an adverse determination that

could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that question the validity or enforceability of the Credit Agreement, any of the other Loan Documents, or the Transactions.

The foregoing opinions are subject to the following additional qualifications:

1. The enforceability of the Indenture with respect to Station Two is subject to the provisions of Section 401 of the 2005 Amendments to Contracts Among City of Henderson, Kentucky, City of Henderson Utility Commission, Big Rivers Electric Corporation, WKE Station Two, Inc. and LG&E Marketing Inc. dated as of April 1, 2005.
2. Whenever our opinions with respect to the existence or non-existence of facts is qualified by the phrase "to our knowledge," or any similar phrase implying a limitation on the basis of knowledge, it is intended to indicate that, during the course of our representation in connection with the transactions referenced in this letter, no information has come to our attention that would give us actual knowledge of the existence or non-existence of facts contrary to the opinions expressed herein and so qualified. We have not undertaken, however, any special investigation to determine the existence or absence of such facts, and no inference as to our knowledge or information concerning the existence or absence of such facts should be drawn from our representation.

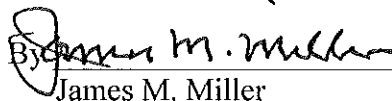
IV. Limitation as to Particular Laws and Reliance on this Opinion

As to matters of law, we limit our opinion to the laws of the Commonwealth of Kentucky, and our opinions are limited to the facts and laws in existence on the date of this opinion and at no subsequent time.

This opinion is delivered to you in connection with the loan referenced above, and may not be utilized or quoted by you for any other purpose or relied upon by any other person or entity other than your successors or assigns without our express written consent.

Very truly yours,

Sullivan, Mountjoy, Stainback,  
& Miller, P.S.C.

  
James M. Miller

cc: Robert W. Berry

**EXHIBIT A**

**FINANCING STATEMENTS**

<b><u>Type of Filing</u></b>	<b><u>Filing Office</u></b>	<b><u>Filing Date</u></b>	<b><u>Continuation Required</u></b>
Initial financing statement (personal property) Secured Party: U.S. Bank, N.A. 2009-2399358-60	Office of the Kentucky Secretary of State	7/16/2009	None
Initial financing statement (fixtures) Secured Party: U.S. Bank, N.A. 2009-2399357-59	Office of the Kentucky Secretary of State	7/16/2009	None

## **EXHIBIT B**

### **LIEN SEARCH RESULTS**

1. The proper filing office(s) to identify tax liens and judgment liens against the Borrower are the offices of the County Clerks in the counties of Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Marshall, McCracken, Meade, Ohio, Union, and Webster in the Commonwealth of Kentucky.
2. The proper name of the debtor necessary to identify tax liens and judgment liens against the Borrower is Big Rivers Electric Corporation.
3. The searches for tax and judgment liens against the Borrower in the locations and under the name set forth herein identified the following tax and/or judgment liens:  
  
None
4. The financing statements on file against the Borrower are identified below:

<b><u>Type of Filing</u></b>	<b><u>Filing Office</u></b>	<b><u>Filing Date</u></b>
Initial financing statement (precautionary lease filing) Secured Party: Fifth Third Equipment Finance Company 2014-2741509-75	Office of the Kentucky Secretary of State	12/21/2014
Initial financing statement (purchase money security interest in equipment) Secured Party: United Rentals (North America), Inc. 2012-2556789-87	Office of the Kentucky Secretary of State	1/5/2012
Initial financing statement (purchase money security interest in equipment) Secured Party: United Rentals (North America), Inc. 2012-2556784-32	Office of the Kentucky Secretary of State	1/5/2012

Initial financing statement (precautionary lease filing) Secured Party: Marlin Leasing Corp. 2010-2469410-39	Office of the Kentucky Secretary of State	7/30/2010
Initial financing statement (precautionary lease filing) Secured Party: Marlin Leasing Corp. 2010-2469406-74	Office of the Kentucky Secretary of State	7/30/2010
Initial financing statement (precautionary lease filing) Secured Party: 1. Marlin Business Bank 2. Marlin Leasing Corp. 2010-2459828-61	Office of the Kentucky Secretary of State	6/10/2010
Initial financing statement (precautionary lease filing) Secured Party: Marlin Leasing Corp. 2010-2458441-71	Office of the Kentucky Secretary of State	6/3/2010
Initial financing statement (precautionary owner filing) Secured Party: Buckman Laboratories, Inc. 2009-2429083-99	Office of the Kentucky Secretary of State	12/29/2009
Initial financing statement (personal property) Secured Party: U.S. Bank, N.A. 2009-2399358-60	Office of the Kentucky Secretary of State	7/16/2009
Initial financing statement (fixtures) Secured Party: U.S. Bank, N.A. 2009-2399357-59	Office of the Kentucky Secretary of State	7/16/2009
Initial financing statement (precautionary lease filing) Secured Party: Dell Financial Services L.L.C. 2008-2311472-90	Office of the Kentucky Secretary of State	4/17/2008



## **LIEN SEARCH DATES AND TIMES**

<b><u>Filing Office</u></b>	<b><u>Search Date and Time</u></b>
Kentucky Secretary of State	March 2, 2015 at 4:30 p.m.
Breckinridge County Clerk	February 24, 2015 at 2:13 p.m.
Caldwell County Clerk	February 24, 2015 at 11:30 a.m.
Crittenden County Clerk	February 24, 2015 at 12:16 p.m.
Daviess County Clerk	February 24, 2015 at 9:09 a.m.
Hancock County Clerk	February 24, 2015 at 12:08 p.m.
Henderson County Clerk	February 24, 2015 at 10:04 a.m.
Hopkins County Clerk	February 24, 2015 at 12:28 p.m.
Livingston County Clerk	February 24, 2015 at 10:12 a.m.
McCracken County Clerk	February 24, 2015 at 10:10 a.m.
Marshall County Clerk	February 24, 2015 at 8:50 a.m.
Meade County Clerk	February 24, 2015 at 2:09 p.m.
Ohio County Clerk	February 24, 2015 at 11:17 a.m.
Union County Clerk	February 24, 2015 at 9:45 a.m.
Webster County Clerk	February 24, 2015 at 1:33 p.m.

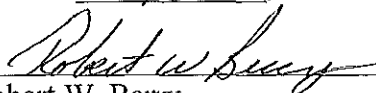
## LITIGATION CERTIFICATE

This Certificate is given by Robert W. Berry, President and Chief Executive Officer of Big Rivers Electric Corporation (the "Borrower") for the purpose of inducing Sullivan, Mountjoy, Stainback & Miller, P.S.C., to render legal opinions in connection with the execution and delivery of the Senior Secured Credit Agreement dated as of March 5, 2015, between the Borrower and KeyBank National Association, Fifth Third Bank, CoBank, ACB as Lenders, National Rural Utilities Cooperative Finance Corporation as Administrative Agent, Lead Arranger, Issuing Lender, and Swingline Lender, and Regions Bank as Syndication Agent and Lender (collectively, the "Lenders"); the secured promissory notes dated as of March 5, 2015, in the aggregate principal amount of \$130,000,000.00, said Notes payable to the Lenders; and the Fifth Supplemental Indenture by and between the Borrower, as grantor, and U.S. Bank National Association, as trustee, dated as of February 23, 2015 (the "Loan Documents").

I, Robert W. Berry, President and Chief Executive Officer of the Borrower, do hereby certify as of the date of this Certificate as follows:

1. I am the President and Chief Executive Officer of the Borrower, and as such possess the knowledge and authority to certify to the matters set forth in this Certificate.
2. I have discussed the subject matter of this Certificate with all officers of and legal counsel to the Borrower who reasonably would be expected to have knowledge of its subject matter.
3. Other than the proceedings identified in Schedule V to the Credit Agreement (the "Litigation Schedule"), as of the Effective Date, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower (i) as to which, in my opinion, there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that question the validity or enforceability of the Credit Agreement, any of the other Loan Documents, or the Transactions.

IN WITNESS WHEREOF, I have executed this Certificate in my capacity as President and Chief Executive Officer of the Borrower as of 3/5, 2015.

  
Robert W. Berry  
President and Chief Executive  
Officer,  
Big Rivers Electric Corporation

**EXHIBIT B-2**

FORM OF OPINION OF SPECIAL COUNSEL TO THE BORROWER

*[See Attached]*

March 5, 2015

National Rural Utilities  
Cooperative Finance Corporation,  
as Administrative Agent, Lead Arranger,  
Issuing Lender and Swingline Lender  
20701 Cooperative Way  
Dulles, VA 20166

Regions Bank, as Syndication Agent and  
The Lenders party to the  
Credit Agreement referred to below

Re: Senior Secured Credit Agreement

Ladies and Gentlemen:

We have acted as special counsel for Big Rivers Electric Corporation, a Kentucky cooperative corporation (the "Borrower") in connection with the Senior Secured Credit Agreement dated as of March 5, 2015 (the "Credit Agreement"), by and among the Borrower and the Lenders parties thereto, National Rural Utilities Cooperative Finance Corporation as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender and Regions Bank, as Syndication Agent. Capitalized terms used in this letter but not otherwise defined herein shall have the respective meanings assigned to them in the Credit Agreement.

Materials Examined

This opinion is being delivered to you pursuant to Section 4.01(a)(vi) of the Credit Agreement. In connection with this opinion, we have examined executed copies of the Credit Agreement and the Secured Promissory Notes (collectively, the "Loan Documents"). We also have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of such records, agreements, instruments and certificates (including certificates of public officials and of officers of the parties) and such other documents. In rendering the opinions expressed below, we have examined only executed counterparts or copies of the Loan Documents that were provided to us. We have also made such other investigations of fact and law as we have considered necessary or appropriate for the purposes of the opinions set forth herein. As to factual matters, we have relied without investigation on the representations and warranties set forth in the Loan Documents.

### Opinions

Based upon such examination and having regard for legal considerations that we deem relevant, we are of the opinion, subject to the qualifications and assumptions set forth below, that:

1. The execution and delivery by the Borrower of the Loan Documents do not, and the performance by it of its obligations thereunder will not, result in a violation by it of any law of the United States or the State of New York, or any rule or regulation thereunder.

2. Each of the Loan Documents constitutes the valid and binding obligation of the Borrower, enforceable against it in accordance with its terms.

3. The Borrower is not (a) an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) subject to regulation under Section 204 of the Federal Power Act of 2005, as amended, in connection with the incurrence of Indebtedness under the Credit Agreement.

4. The execution and delivery by the Borrower of the Credit Agreement does not, and the performance by it of its obligations thereunder will not, require any approval, consent or other action of, notice to, qualification or filing with, any Governmental Authority of the United States or the State of New York.

5. Assuming that the proceeds of the Loans are applied as described in Section 5.10 of the Credit Agreement, the execution, delivery and performance of the Loan Documents has not resulted and will not result in any violation of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), Regulation X of said Board (12 CFR 224) or Regulation T of said Board (12 CFR 220).

### Certain Assumptions

In rendering the opinions stated above, we have, with your consent, assumed (i) the due organization of each party to the Loan Documents and the existence and good standing of each party to the Loan Documents, (ii) the authority of each party thereto to do business in each relevant jurisdiction, (iii) the legal capacity and authority of all natural persons executing the Loan Documents, (iv) the truth, accuracy and completeness of the information, factual matters, representations and warranties as to matters of fact contained in the records, documents,

National Rural Utilities  
Cooperative Finance Corporation  
Regions Bank  
March 5, 2015  
Page 3

instruments and certificates we have reviewed, (v) the due authorization, execution and delivery of the Loan Documents by each party thereto, (vi) that the Loan Documents are valid and binding obligations of the parties thereto, enforceable against the parties thereto in accordance with their respective terms (other than as set forth in opinion paragraph 2 above), (vii) the power and authority of each party to the Loan Documents to execute and deliver and perform its obligations thereunder, (viii) that such execution and delivery will not breach, conflict with or constitute a violation of, the laws of any jurisdiction, or of any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority (other than as set forth in paragraphs 1 and 5 above), (ix) that such execution and delivery does not require the consent or approval of any Person that has not already been obtained (other than as set forth in opinion paragraph 4 above), (x) the absence of any evidence extrinsic to the provisions of the Loan Documents between the respective parties thereto that such parties intended a meaning contrary to that expressed by the respective provisions thereof, and (xi) the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

We express no opinion herein as to laws other than the law of the State of New York and of the United States. We express no opinion as to whether the law of any particular jurisdiction applies to the Loan Documents, and no opinion to the extent that the laws of any jurisdiction other than those identified above are applicable to the Loan Documents.

Our opinion that any Loan Document is valid, binding or enforceable in accordance with its terms is qualified as to (a) limitations imposed by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium, or other laws relating to or affecting the rights of creditors generally; (b) rights to indemnification and contribution which may be limited by applicable law and equitable principles; (c) the unenforceability under certain circumstances of provisions imposing penalties, forfeiture, late payment charges, or an increase in interest rate upon delinquency in payment or the occurrence of any event of default; and (d) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing, and the possible unavailability of specific performance or injunctive relief, regardless of whether such enforceability is considered in a proceeding in equity or at law.

With respect to our opinion in paragraph 4 above, we express no opinion regarding any requirement for any approval, consent or other action of, notice to, qualification or filing with, any Governmental Authority of the United States or the State of New York arising under or

National Rural Utilities  
Cooperative Finance Corporation  
Regions Bank  
March 5, 2015  
Page 4

pursuant to any contract with, or any contractual obligation to, any such Governmental Authority.

#### Use of Opinion

This opinion letter addresses the legal consequences of only the facts existing or assumed as of the date hereof. The opinions expressed herein are based on an analysis of existing laws and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted, events occurring, or changes in the relevant facts, after the date hereof. We have not undertaken to determine, or to inform any Person of, the occurrence or non-occurrence of any such actions, events, or changes. This opinion is rendered for the sole benefit of, and may be relied upon only by, you and your respective successors and assigns in connection with the transactions described in the first paragraph of this letter and may not be disclosed, published or communicated to, or relied upon or used by, quoted or referred to, nor may copies hereof be delivered to, any other Person (other than your attorneys and other professional advisors or as required by applicable law) or for any other purpose without our prior written consent. We disclaim any obligation to update this opinion letter for events occurring or coming to our attention after the date hereof. At your request, we hereby consent to reliance hereon by your successors or assigns pursuant to the Credit Agreement, on the condition and understanding that (i) this letter speaks only as of the date hereof, (ii) we have no responsibility or obligation to update this letter, to consider its applicability or correctness to other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware, (iii) any such reliance by a successor or assign must be actual and reasonable under the circumstances existing at the time of assignment, including any changes in law, facts or any other developments known to or reasonably knowable by the successor or assign at such time, and (iv) the knowledge of the addressees with respect to matters addressed in this opinion letter shall be imputed to all assignees or successors.

Very truly yours,

**EXHIBIT C**

FORM OF PROMISSORY NOTE

*[See Attached]*



## EXHIBIT B

THIS SERIES 2015A FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

**R-**

### **BIG RIVERS ELECTRIC CORPORATION**

### **FIRST MORTGAGE NOTES, SERIES 2015A**

\$[\_\_\_\_\_]

March 5, 2015

**FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION**, a Kentucky cooperative corporation (the "Borrower") **HEREBY PROMISES TO PAY** to [\_\_\_\_\_] (the "Lender"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [\_\_\_\_\_] DOLLARS (\$[\_\_\_\_\_]), or the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding at the end of the Availability Period (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.11 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note all payments of principal and interest in respect of the Loan, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Senior Secured Credit Agreement, dated as of March 5, 2015, among the Borrower, the several financial institutions or entities from time to time parties thereto, National Rural Utilities Cooperative Finance Corporation, as administrative agent, lead arranger, issuing lender and swingline lender, and Regions Bank, as syndication agent, as amended, amended and restated, supplemented or modified from time to time (the "Credit Agreement"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

Exh. B-1

The Credit Agreement provides for prepayments on the terms and conditions specified therein, including payment of breakage costs pursuant to Section 2.14 of the Credit Agreement.

This Note is an Obligation (as defined in the Indenture) subject to and is secured by that certain Indenture, dated as of July 1, 2009, as supplemented, by and between the Borrower and U.S. Bank National Association, as Trustee (the "Indenture").

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer duly executed, by the registered Holder hereof (or such Holder's attorney duly authorized in writing) and countersigned by the Administrative Agent, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

**BIG RIVERS ELECTRIC  
CORPORATION**

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

This is one of the Obligations (as defined in the Indenture) of the series designated therein referred to in the Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

[illegible]

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

---

(Please print or typewrite name and address including zip code of assignee)

---

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

---

attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

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

\_\_\_\_\_  
(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to S.E.C. Rule 17Ad-15.

The Administrative Agent hereby authorizes the Trustee as Obligation Registrar (as defined in the Indenture) for the First Mortgage Notes, Series 2015A to transfer this Note under the Indenture pursuant to the instructions, above.

National Rural Utilities Cooperative Finance Corporation,  
as Administrative Agent

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

## EXHIBIT D

[Form of Compliance Certificate]

### COMPLIANCE CERTIFICATE

I, [\_\_\_\_], the [\_\_\_\_]<sup>14</sup> of Big Rivers Electric Corporation (the “Company”) DO HEREBY CERTIFY that:

(a) I have conducted a review of the Credit Agreement dated as of March 5, 2015 (as amended, supplemented, restated or otherwise modified from time to time, the “Credit Agreement”) by and among the Company, the Lenders party thereto and National Rural Utilities Cooperative Finance Corporation, as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender, the financial statements of the Company and such other documents as I have deemed necessary for this certification. Capitalized terms used and not defined herein shall have the meanings assigned to them in the Credit Agreement. This Compliance Certificate is being delivered pursuant to Section 5.01(c) of the Credit Agreement.

(b) [No Default has occurred during the period beginning on [\_\_\_\_], 20[\_\_\_\_] and ending on the date hereof.] [Attached hereto as Annex 1 is a detailed description of each Default that has occurred during the period beginning on [\_\_\_\_], 20[\_\_\_\_] and ending on the date hereof, together with a description of any action taken or proposed to be taken with respect thereto.]

(c) Attached hereto as Schedule 1 are detailed calculations demonstrating compliance with the covenants set forth in Section 6.07 of the Credit Agreement as of the date hereof.

WITNESS my hand this \_\_\_\_ day of [\_\_\_\_], 20[\_\_\_\_].

\_\_\_\_\_  
Title:

<sup>14</sup> To be executed by the Company’s chief financial officer or other Responsible Officer acceptable to the Administrative Agent.

## EXHIBIT E

[Form of Borrowing Request]

### BORROWING REQUEST

**Borrower Name:** Big Rivers Electric Corporation

**Facility Number:** [●]

**Type of Borrowing:**

☐ **Swingline Loan**

**Effective Date of Borrowing:** \_\_\_\_\_

**The Borrowing Amount:** \_\_\_\_\_

**Interest Rate Elected:**

☐ **LIBO Borrowing**

☐ **ABR Borrowing**

**Interest Rate Elections Period if LIBO Borrowing is chosen:**

<input type="checkbox"/> <b>1-month LIBO</b>	<input type="checkbox"/> <b>2-month LIBO</b>
<input type="checkbox"/> <b>3-month LIBO</b>	<input type="checkbox"/> <b>6-month LIBO</b>

**Wiring Instructions:**

**Bank Name** \_\_\_\_\_

**City, State** \_\_\_\_\_

**ABA No** \_\_\_\_\_

**Account No** \_\_\_\_\_

**Credit Account Name** \_\_\_\_\_

**Additional Instructions** \_\_\_\_\_



## Certification

Acting on behalf of the Borrower, I hereby certify that as of the date below: (1) I am duly authorized to make this certification and to request funds on the terms specified herein; (2) the Borrower has met all of the conditions to this Borrowing contained in the Credit Agreement dated as of March 5, 2015 (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among the Borrower, the Lenders party thereto and National Rural Utilities Cooperative Finance Corporation, as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender, governing the terms of this Borrowing Request that the Borrower is required to meet prior to an advance of funds; (3) all of the representations and warranties contained in the Credit Agreement (except for the representations contained in Section 3.04(b), Section 3.06, Section 3.07, Section 3.13, Section 3.15 and Section 3.16 which shall have been true and correct as of the Effective Date) are true and correct on and as of the date hereof and will be deemed to be true and correct on and as of the effective date of this Borrowing unless notice is otherwise given by the Borrower to the Administrative Agent before the effective date, in each case, other than any such representations or warranties that, by their terms, refer to a specific date other than such effective date, in which case such representations and warranties are true, correct and complete as of such date; (4) no Default has occurred and is continuing or would result from this Borrowing or from the application of the proceeds therefrom; and (5) the terms hereof shall be binding upon Borrower under the provisions of the Credit Agreement, except to the extent inconsistent with the terms of the Credit Agreement, in which case the terms of the Credit Agreement shall prevail.

### Certified By:

\_\_\_\_\_  
Signature  
Date

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

Attn: Loan Syndications  
Fax Number: (703) 467-5681

## EXHIBIT F

[Form of Interest Election Request]

[This form should only be used to continue or convert a rate on an existing Loan]

## INTEREST ELECTION REQUEST

**Borrower Name:** Big Rivers Electric Corporation

**Loan Number:**           [●]          

**Original Effective Date of Borrowing:** \_\_\_\_\_

**Effective Date of Interest Election:** \_\_\_\_\_

**The Amount of Borrowing\*:**\_\_\_\_\_

**\* If different options are being elected with respect to different portions of the original Borrowing, indicate also the portion of the original Borrowing to be allocated to this Interest Election Request.**

**Interest Rate Elected:**

## LIBO Borrowing

## ABR Borrowing

**Interest Rate Elections Period if LIBO Borrowing is chosen:**

☐ **1-month LIBO**

☐ **2-month LIBO**

☐ **3-month LIBO**

☐ **6-month LIBO**

## Certification

Acting on behalf of the Borrower, I hereby certify that as of the date below: (1) I am duly authorized to make this certification and to make the Interest Election Request specified herein; and (2) the Borrower has met all of the conditions contained in the Credit Agreement dated as of March 5, 2015 (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among the Borrower, the Lenders party thereto and National Rural Utilities Cooperative Finance Corporation, as Administrative Agent, Lead Arranger, Issuing Lender and Swingline Lender, governing the terms of this Interest Election Request that the Borrower is required to meet prior to such Interest Election Request; (3) all of the representations and warranties contained in the Credit Agreement (except for the representations contained in Section 3.04(b), Section 3.06, Section 3.07, Section 3.13, Section 3.15 and Section 3.16 which shall have been true and correct as of the Effective Date) are true and correct on and as of the date hereof and will be deemed to be true and correct on and as of the effective date of this Interest Election Request unless notice is otherwise given by the Borrower to the Administrative Agent before the effective date of this Interest Election Request, in each case, other than any such representations or warranties that, by their terms, refer to a specific date other than such effective date, in which case such representations and warranties are true, correct and complete as of such date; (4) no Default has occurred and is continuing or would result from this Borrowing or from the application of the proceeds therefrom; and (5) the terms hereof shall be binding upon Borrower under the provisions of the Credit Agreement, except to the extent inconsistent with the terms of the Credit Agreement, in which case the terms of the Credit Agreement shall prevail.

### Certified By:

---

Signature

Date

---

Name:

Title:

## EXHIBIT G

[Form of Solvency Certificate]

### SOLVENCY CERTIFICATE

[\_\_\_\_], 20[\_\_]

This SOLVENCY CERTIFICATE (this “Solvency Certificate”) is delivered in connection with that certain Credit Agreement, dated as of the date hereof (the “Credit Agreement”), by and among Big Rivers Electric Corporation, as borrower (the “Borrower”), the lenders party thereto (collectively, the “Lenders”) and National Rural Utilities Cooperative Finance Corporation as administrative agent for the Lenders (the “Administrative Agent”). Capitalized terms used but not defined herein shall have the meanings assigned such terms in the Credit Agreement.

The undersigned, in his or her capacity as a knowledgeable Responsible Officer, hereby certifies to the Administrative Agent and the Lenders that:

1. The undersigned has carefully reviewed the contents of this Solvency Certificate and has conferred with counsel (or had the opportunity to confer with counsel) for the Borrower for the purpose of discussing the meaning of any provisions hereof that the undersigned desired to have clarified.

2. Immediately after the consummation of the Transactions to occur on the Effective Date:

a. The present fair value of the assets of the Borrower is greater than the total amount of the liabilities, including contingent liabilities, of the Borrower.

b. The present fair saleable value of the property of the Borrower is not less than the amount that will be required to pay the probable liability of its debts as such debts become absolute and matured.

c. The Borrower does not intend to, and does not believe that it will incur debts or liabilities beyond its ability to pay such debts and liabilities as they mature.

d. The Borrower is not engaged in business, and is not about to engage in business, for which its property would constitute unreasonably small capital for a generation and transmission cooperative.

***[Remainder of page intentionally left blank; signature page follows.]***

This Solvency Certificate is executed by the undersigned as of the date first written above.

**BIG RIVERS ELECTRIC CORPORATION**

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

**EXHIBIT H**

FORM OF FIFTH SUPPLEMENTAL INDENTURE

*[See Attached]*

---

**FIFTH SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of February 23, 2015

Relating to the Big Rivers Electric Corporation  
First Mortgage Notes, Series 2015A  
Authorized by this Fifth Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**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 2 THROUGH 4.
  - THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

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: \_\_\_\_\_

**THIS FIFTH SUPPLEMENTAL INDENTURE**, dated as of February 23, 2015 (this “Fifth Supplemental 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”), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the “Trustee”), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the “Original Indenture”, as heretofore, hereby and hereafter supplemented being sometimes referred to as the “Indenture”), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, in connection herewith, the Company will enter into a Senior Secured Credit Agreement, dated as of March 5, 2015 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), with the several financial institutions or entities from time to time parties thereto (the “Lenders”), National Rural Utilities Cooperative Finance Corporation, as administrative agent, lead arranger, issuing lender and swingline lender (the “Administrative Agent”) and Regions Bank, as syndication agent, pursuant to which the Lenders have agreed to loan the Company, on a revolving basis, up to \$130,000,000 in principal amount at any time outstanding and, in connection therewith, the Company will secure certain of its obligations under the Credit Agreement under this Fifth Supplemental Indenture; and

**WHEREAS**, the Company desires to execute and deliver this Fifth Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Notes, Series 2015A, in the principal amount of \$130,000,000 at any time outstanding (the “First Mortgage Notes, Series 2015A”) as an Additional Obligation and specifying the form and provisions of the First Mortgage Notes, Series 2015A; and

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Notes, Series 2015A, to make the First Mortgage Notes, Series 2015A issued hereunder, when executed by the Company,



authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Notes, Series 2015A, in accordance with their terms, have been done and taken; and the execution and delivery of this Fifth Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS FIFTH SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Notes, Series 2015A, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Notes, Series 2015A are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture 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 Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture 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 of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture 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, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the 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 in the Original Indenture not to be deemed part of the Trust Estate) being part of 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 of the Original Indenture 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 under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, 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 the 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 therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Notes, Series 2015A are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, 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**

### **THE FIRST MORTGAGE NOTES, SERIES 2015A AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this Fifth Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Notes, Series 2015A.**

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Notes, Series 2015A" (hereinafter referred to as the "First Mortgage Notes, Series 2015A"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.06 hereof. The First Mortgage Notes, Series 2015A are the same Notes described and defined in the Credit Agreement as the "Secured Promissory Note." The aggregate principal face amount of the First Mortgage Notes, Series 2015A which shall be authenticated and delivered and Outstanding at any one time is limited to \$130,000,000. The First Mortgage Notes, Series 2015A shall be dated March 5, 2015 and are due March 5, 2018.

The First Mortgage Notes, Series 2015A shall bear interest at the rates and be payable on the Interest Payment Dates (as defined in the Credit Agreement) set forth in the Credit Agreement. The principal of and interest on the First Mortgage Notes, Series 2015A 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 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such Interest Payment Date (as defined in the Credit Agreement). Interest on the First Mortgage Notes, Series 2015A shall be computed pursuant to the Credit Agreement. The Company will act as the Paying Agent for the First Mortgage Notes, Series 2015A and the Trustee shall be Obligation Registrar pursuant to Section 3.7 of the Original Indenture.

#### **SECTION 1.03. Repayment.**

Repayment of the First Mortgage Notes, Series 2015A shall be made pursuant to the Credit Agreement.

#### **SECTION 1.04. Voluntary Prepayment.**

The Company may at any time and from time to time prepay the First Mortgage Notes, Series 2015A, as provided in the Credit Agreement.

#### **SECTION 1.05. Mandatory Prepayment.**

The Company shall prepay the First Mortgage Notes, Series 2015A, pursuant to the mandatory prepayment provisions of the Credit Agreement.

#### **SECTION 1.06. Form of the First Mortgage Notes, Series 2015A.**

The First Mortgage Notes, Series 2015A and the Trustee's authentication certificate to be executed on the First Mortgage Notes, Series 2015A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

#### **SECTION 1.07. Registration and Transfer of the First Mortgage Notes, Series 2015A.**

The First Mortgage Notes, Series 2015A shall be issued as fully registered notes without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The First Mortgage Notes, Series 2015A shall be registered in the name of the Lenders (as defined in the Credit Agreement) in certificated form. Transfers of the First Mortgage Notes, Series 2015A must occur under the terms of the Credit Agreement and the Indenture. To affect a transfer under the Indenture, Holders must fill in and execute the Transfer Notice attached to the First Mortgage Notes, Series 2015A (the "Transfer Notice") and submit the First Mortgage Notes, Series 2015A and the Transfer Notice to the Administrative Agent. Upon countersignature by the Administrative Agent of the Transfer Notice the Administrative Agent shall surrender such First Mortgage Notes, Series 2015A, together with the completed Transfer Notice, to the Trustee for registration of transfer pursuant to the provisions of the Indenture.

### **ARTICLE II**

#### **MISCELLANEOUS**

#### **SECTION 2.01. Supplemental Indenture.**

This Fifth Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. All of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2015A to the same extent as if specifically set forth herein except to the extent any such provisions, terms, covenants and conditions are covered or addressed by the express terms of this Fifth Supplemental Indenture or the Credit

Agreement, in which case this Fifth Supplemental Indenture or the Credit Agreement, as applicable, shall apply.

#### **SECTION 2.02. Recitals.**

All recitals in this Fifth Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Fifth Supplemental Indenture or the First Mortgage Notes, Series 2015A (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2015A; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Credit Agreement, and it will not be responsible for or charged with knowledge of any terms of the Credit Agreement.

#### **SECTION 2.03. Successors and Assigns.**

Whenever in this Fifth Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Fifth Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

#### **SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Fifth Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Fifth Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Fifth Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

#### **SECTION 2.05. Counterparts.**

This Fifth Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Fifth Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Fifth Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company is authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created.

[Signatures on Next Page.]

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

## BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name: Robert W. Berry  
Title: President and Chief  
Executive Officer

(SEAL)

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY )  
 ) ss  
COUNTY OF HENDERSON )

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Robert W. Berry, President and Chief Executive Officer of Big Rivers Electric Corporation, a Kentucky corporation, for and on behalf of said corporation.

WITNESS my hand and official seal.

Notary Public's Signature  
Notary Public – Kentucky, State at Large  
My commission expires:

(Notarial Seal)

Trustee:

**U.S. BANK NATIONAL ASSOCIATION, as**  
Trustee

By: \_\_\_\_\_  
Name: Philip G. Kane, Jr.  
Title: Vice President

STATE OF CONNECTICUT )  
 )  
COUNTY OF HARTFORD )

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Philip G. Kane, Jr., Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Notary Public's Signature  
 Notary Public, State of \_\_\_\_\_,  
 County of \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

(Notarial Seal)



## **EXHIBIT A**

### **RECORDING INFORMATION FOR INDENTURE DATED AS OF JULY 1, 2009**

Breckinridge County	Mortgage Book 354, page 533
Caldwell County	Mortgage Book 258, page 1
Crittenden County	Mortgage Book 184, page 457
Daviess County	Mortgage Book 1707, page 562
Hancock County	Mortgage Book 177, page 259
Henderson County	Mortgage Book 1032, page 1
Hopkins County	Mortgage Book 965, page 227
Livingston County	Mortgage Book 262, page 305
Marshall County	Mortgage Book 672, page 592
McCracken County	Mortgage Book 1232, page 329
Meade County	Mortgage Book 627, page 222
Ohio County	Mortgage Book 435, page 500
Union County	Mortgage Book 373, page 152
Webster County	Mortgage Book 283, page 578

## EXHIBIT B

THIS SERIES 2015A FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

R-

**BIG RIVERS ELECTRIC CORPORATION**

**FIRST MORTGAGE NOTES, SERIES 2015A**

\$[ ]

March 5, 2015

**FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION**, a Kentucky cooperative corporation (the "Borrower") **HEREBY PROMISES TO PAY** to [ ] (the "Lender"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [ ] DOLLARS (\$[ ]), or the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding at the end of the Availability Period (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.11 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note all payments of principal and interest in respect of the Loan, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Senior Secured Credit Agreement, dated as of March 5, 2015, among the Borrower, the several financial institutions or entities from time to time parties thereto, National Rural Utilities Cooperative Finance Corporation, as administrative agent, lead arranger, issuing lender and swingline lender, and Regions Bank, as syndication agent, as amended, amended and restated, supplemented or modified from time to time (the "Credit Agreement"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

Exh. B-1

The Credit Agreement provides for prepayments on the terms and conditions specified therein, including payment of breakage costs pursuant to Section 2.14 of the Credit Agreement.

This Note is an Obligation (as defined in the Indenture) subject to and is secured by that certain Indenture, dated as of July 1, 2009, as supplemented, by and between the Borrower and U.S. Bank National Association, as Trustee (the "Indenture").

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer duly executed, by the registered Holder hereof (or such Holder's attorney duly authorized in writing) and countersigned by the Administrative Agent, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

EXHIBIT

**BIG RIVERS ELECTRIC  
CORPORATION**

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

EXHIBIT

This is one of the Obligations (as defined in the Indenture) of the series designated therein referred to in the Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_

[illegible]

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

(Please print or typewrite name and address including zip code of assignee)

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

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

(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to S.E.C. Rule 17Ad-15.

The Administrative Agent hereby authorizes the Trustee as Obligation Registrar (as defined in the Indenture) for the First Mortgage Notes, Series 2015A to transfer this Note under the Indenture pursuant to the instructions, above.

National Rural Utilities Cooperative Finance Corporation,  
as Administrative Agent

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

## **EXHIBIT I**

### **FORM OF RUS LOAN APPLICATION**

*[please see attached the table of contents for the RUS Loan Application, the application itself is voluminous and available upon request]*



## **FINANCING DOCUMENT - RUS LOAN APPLICATION PACKAGE**

### **Big Rivers Electric Corporation - 2014 RUS Loan Application for Financing of 2012 Environmental Compliance - Construction Work Plan**

#### **TABLE OF CONTENTS**

##### **PART 1 - GENERAL**

Vol. 1.	I.	Instructions
Vol. 1.	II.	Document Submittal Letter
Vol. 1.	II.	(a) List of CONFIDENTIAL Material Included in Application
Vol. 1.	III.	Financing Document Cover Page
Vol. 1.	IV.	Board of Directors, Executives, Loan Contacts

##### **PART 2 - APPLICANT INFORMATION**

Vol. 1	I.	General
Vol. 1	II.	Management
Vol. 1	III.	Members
Vol. 1	IV.	Subsidiary
Vol. 1	V.	Public Rating
Vol. 1	VI.	Project Overview Summary
Vol. 1	VII.	Re Act Beneficiary Issues
Vol. 1	VIII.	Interim Financing
Vol. 1	IX.	Rural Economic Development
Vol. 1	X.	Risk Management
Vol. 1	XI.	Homeland Security
Vol. 1	XII.	Internal Revenue Service
Vol. 1	XIII.	Deregulation
Vol. 1	XIV.	Loan Security Contracts

##### **PART 3 - FINANCIAL AND MISCELLANEOUS**

Vol. 1	I.	Statement - 7 CFR 1710.501(a)(1)
Vol. 1	II.	Board Resolution - 7 CFR 1710.501(a)(2)
Vol. 1	II.(a)	Representation Regarding Felony Conviction or Tax Delinquent Status
Vol. 1	III.	RUS Form 740c - 7 CFR 1710.501(a)(3)
Vol. 1	IV.	RUS Form 740g - 7 CFR 1710.501(a)(4)
Vol. 1	V.	RUS Form 12 - 7 CFR 1710.501(a)(5)
Vol. 1	VI.	Pending Litigation Statement - 7 CFR 1710.501(a)(6)
Vol. 1	VII.	Documentation - 7 CFR 1710.501(a)(7)

## **FINANCING DOCUMENT - RUS LOAN APPLICATION PACKAGE**

### **Big Rivers Electric Corporation - 2014 RUS Loan Application for Financing of 2012 Environmental Compliance - Construction Work Plan**

#### **TABLE OF CONTENTS**

Vol. 1	VIII.	Standard Form 100 - 7 CFR 1710.501(a)(9)
Vol. 1	IX.	Form AD-1047 - 7 CFR 1710.501(a)(10)
Vol. 1	X.	Uniform Relocation Act Assurance Statement - 7 CFR 1710.501(a)(11)
Vol. 1	XI.	Lobbying Certificate(s) - 7 CFR 1710.501(a)(12)
Vol. 1	XII.	Federal Debt Delinquency Requirements Certificate - 7 CFR 1710.501(a)(13)
Vol. 1	XIII.	Articles of Incorporation and Bylaws - 7 CFR 1710.501(a)(14)
Vol. 1	XIV.	State Regulatory Approvals - 7 CFR 1710.501(a)(15)
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#### **PART 4 - POWER DELIVERY SYSTEM**

Vol. 2	I.	Transmission System
Vol. 2	II.	Transmission Service Arrangements
Vol. 2	III.	North American Electric Reliability Council
Vol. 2	IV.	Regional Transmission Organizations
Vol. 2	V.	Transmission and Subtransmission Facilities
Vol. 2	VI.	Transmission Requirements for Generation Projects

#### **PART 5 - GENERATION**

Vol. 2	I.	Power Supply System
Vol. 2	II.	Proposed New Generation Resources
Vol. 2	III.	Proposed Generation System Improvements

#### **PART 6 - OTHER DOCUMENTS**

Vol. 2	I.	Depreciation Study - November 2012 (Burns & McDonnell)
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**EXHIBIT J-1**

[FORM OF]

**U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 5, 2015 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Big Rivers Electric Corporation, as the Borrower, each lender from time to time party thereto and National Rural Utilities Cooperative Finance Corporation as the Administrative Agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT J-2**

[FORM OF]

**U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 5, 2015 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Big Rivers Electric Corporation, as the Borrower, each lender from time to time party thereto and National Rural Utilities Cooperative Finance Corporation as the Administrative Agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code].

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

### EXHIBIT J-3

[FORM OF]

#### U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 5, 2015 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Big Rivers Electric Corporation, as the Borrower, each lender from time to time party thereto and National Rural Utilities Cooperative Finance Corporation as the Administrative Agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

## EXHIBIT J-4

[FORM OF]

### U.S. TAX COMPLIANCE CERTIFICATE (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 5, 2015 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among Big Rivers Electric Corporation, as the Borrower, each lender from time to time party thereto and National Rural Utilities Cooperative Finance Corporation as the Administrative Agent.

Pursuant to the provisions of Section 2.15 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**AMENDMENT NO. 1  
TO THE SENIOR SECURED CREDIT AGREEMENT**

This **AMENDMENT NO. 1 TO THE SENIOR SECURED CREDIT AGREEMENT** (this "Amendment") is made as of September 19, 2017, by and among Big Rivers Electric Corporation (the "Borrower"), each Lender (as defined in the Credit Agreement (as defined below)), and National Rural Utilities Cooperative Finance Corporation, as a Lender, Lead Arranger, the Issuing Lender, the Swingline Lender and as Administrative Agent for the Lenders (in its capacity as the administrative agent for the Lenders, the "Administrative Agent").

**RECITALS**

A. Pursuant to that certain Senior Secured Credit Agreement, dated as of March 5, 2015, by and among the Borrower, the Lenders party thereto, the Issuing Lender, the Swingline Lender and the Administrative Agent (as amended or otherwise modified from time to time, the "Credit Agreement"), the Lenders have made certain funds available to the Borrower in accordance with the terms and conditions set forth therein.

B. The Borrower has requested an amendment to the Credit Agreement in the manner and for the purposes set forth in this Amendment.

C. The Administrative Agent and the Lenders party hereto are willing to agree to such requests, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises set forth above, the terms and conditions contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined in this Amendment shall have the meanings that are set forth in the Credit Agreement. Unless otherwise noted, all references to sections or section numbers are to those of the Credit Agreement.

2. **Amendments to the Credit Agreement.**

(a) The "\$130,000,000" set forth on the Cover Page to the Credit Agreement is hereby amended to read "\$100,000,000".

(b) The introductory paragraph immediately preceding Article I is hereby amended and restated in its entirety to read as follows:

The Borrower (as hereinafter defined) has requested that the Lenders (as hereinafter defined), the Swingline Lender (as hereinafter defined) and the Issuing Lender (as hereinafter defined) make loans and extend credit to it in an aggregate principal amount not exceeding \$100,000,000 at any one time outstanding. The Lenders, the Swingline Lender and the Issuing Lender are prepared to extend such credit upon the terms and conditions hereof, and, accordingly, the parties hereto agree as follows:

(c) The following definitions are hereby added to Section 1.01 in alphabetical order:

*“Amendment No. 1 Effective Date” means the date on which the conditions set forth in Section 4 of Amendment No. 1 to the Senior Secured Credit Agreement are satisfied, so long as such date is on or prior to September 30, 2017.*

(d) The term “Commitment” set forth in Section 1.01 is hereby amended and restated in its entirety to read as follows:

*“Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The amount of each Lender’s Commitment as at the Amendment No. 1 Effective Date is set forth on Schedule I, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The aggregate amount of the Lenders’ Commitments as at the Amendment No. 1 Effective Date is \$100,000,000.*

(e) The term “Maturity Date” set forth in Section 1.01 is hereby amended and restated in its entirety to read as follows:

*“Maturity Date” means the date that is three (3) years after the Amendment No. 1 Effective Date; provided that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.*

(f) Section 2.09(b)(ii) is hereby deleted in its entirety and replaced with the words “Intentionally omitted.”

(g) Section 6.07(b) is hereby amended and restated in its entirety to read as follows:

*(b) Members’ Equities’ Balance. The Borrower will maintain, in accordance with GAAP, a minimum Members’ Equities’ Balance at each fiscal quarter-end and as of the last day of each fiscal year, as specified below during the following calendar year periods:*



<b>Period Ending (and the Fiscal Quarters Ending Therein)</b>	<b>Amount</b>
December 31, 2014	\$375,000,000
December 31, 2015	\$375,000,000 plus 50% of the positive net margins for the Borrower's fiscal year ending December 31, 2014
December 31, 2016	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014 and December 31, 2015
December 31, 2017	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014, December 31, 2015 and December 31, 2016
December 31, 2018	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014, December 31, 2015, December 31, 2016 and December 31, 2017
December 31, 2019	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014, December 31, 2015, December 31, 2016, December 31, 2017 and December 31, 2018
December 31, 2020	\$375,000,000 plus 50% of the cumulative positive net margins between the Borrower's fiscal years ending December 31, 2014, December 31, 2015, December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019

(h) Schedule I attached to the Credit Agreement is hereby replaced in its entirety with Schedule I attached to this Amendment.

3. **Reallocation of Commitments.** The Lenders have agreed among themselves to reallocate their respective Commitments. Each of the Administrative Agent, the Lenders and the Borrower hereby consents to the reallocation of the Commitments. On the date this Amendment becomes effective and after giving effect to such reallocation and assignment, the Commitment of each Lender shall be as set forth on Schedule I attached to this Amendment. Each Lender hereby consents to the Commitments set forth on Schedule I attached to this Amendment. The reallocation of the aggregate Commitment among the Lenders shall be deemed to have been consummated pursuant to the terms of the Assignment and Assumption Agreement attached as Exhibit A to the Credit Agreement as if the Lenders had executed an Assignment and Assumption Agreement with respect to such reallocation. The Administrative Agent hereby waives the \$3,500 assignment fee set forth in Section 9.04(b)(iv) of the Credit Agreement with respect to the assignments and reallocations contemplated by this Section 3.

4. **Conditions.** The amendments to the Credit Agreement set forth in Section 2 of this Amendment and the reallocation of Commitments set forth in Section 3 of this Amendment shall be effective on the date that each of the following conditions is satisfied:

(a) The Administrative Agent shall have received a counterpart of this Amendment, executed by the Borrower and the Lenders;

(b) Each Lender shall have received a Secured Promissory Note pursuant to Section 2.08(f), executed by the Borrower and authenticated by the Trustee, in the amount of such Lender's Commitment as set forth on Schedule I attached hereto;

(c) The amendment to the Fifth Supplemental Indenture (the "Indenture Amendment"), amending the Fifth Supplemental Indenture to reference the extended Maturity Date and to reduce the principal amount of the Secured Promissory Notes to be outstanding as provided hereunder, (i) shall have been fully executed and authenticated in form and substance satisfactory to the Administrative Agent and (ii) shall have been duly filed, recorded or indexed in all jurisdictions necessary to provide the Trustee thereunder a perfected lien (including, but not limited to, each jurisdiction where the Fifth Supplemental Indenture has been filed, recorded or indexed), subject to Permitted Exceptions (as defined in the Indenture), on all of the Trust Estate (as defined in the Indenture), all in accordance with applicable law, and the Borrower shall have paid all applicable taxes, recording and filing fees and caused satisfactory evidence thereof to be furnished to the Administrative Agent and the Lenders. The Administrative Agent shall have received a fully executed and authenticated counterpart or copy of the Indenture Amendment;

(d) The Administrative Agent shall have received the following, each dated as of the Amendment No. 1 Effective Date (unless otherwise specified or agreed to by the Administrative Agent), in form and substance reasonably satisfactory to the Administrative Agent (unless otherwise specified or agreed to by the Administrative Agent):

(i) Certified copies of the resolutions of the Board of Directors of the Borrower approving this Amendment and the transactions contemplated hereby, and of all other material third party approvals and consents (which includes the

Kentucky Public Service Commission approval) with respect to this Amendment and the transactions contemplated hereby;

(ii) A copy of (A) a certificate or certificates of the Secretary of State of the Commonwealth of Kentucky (the "Secretary of State"), dated as of a recent date satisfactory to the Administrative Agent, certifying as to a true and correct copy of the organizational documents of the Borrower and each amendment thereto on file in such Secretary of State's office, and (B) a Certificate of Good Standing for the Borrower issued by the Secretary of State;

(iii) A certificate of the Secretary or an Assistant Secretary of the Borrower certifying as to (A) the absence of any amendments to the Certificate of Incorporation of the Borrower since the date of the Secretary of State's certificate referred to in Section 4(d)(ii) of this Amendment, (B) a true and correct copy of the bylaws of the Borrower as in effect on the date on which the resolutions referred to in Section 4(d)(i) of this Amendment were adopted and on the Amendment No. 1 Effective Date, (C) the due organization and good standing or valid existence of the Borrower as a company organized under the laws of the Commonwealth of Kentucky, and the absence of any proceeding for the dissolution or liquidation of the Borrower, and (D) the names and true signatures of the officers of the Borrower authorized to sign this Amendment and the other documents to be delivered hereunder and the other Loan Documents; and

(iv) A certificate signed by two Responsible Officers of the Borrower certifying, representing and warranting that (A) the representations and warranties (other than the representations and warranties contained in Section 3.04 and Section 3.13 of the Credit Agreement, but including, without limitation, the representations and warranties contained in Section 5 of this Amendment) contained in the Loan Documents, when taken together with, in the case of Section 3.06, the revised Schedule V attached hereto, in the case of Section 3.15 of the Credit Agreement, the revised Schedule II attached hereto and, in the case of Section 3.17 of the Credit Agreement, the revised Schedule IV attached hereto, are true and correct as of the Amendment No. 1 Effective Date, (B) there is no event occurring and continuing, or resulting from the Borrower's execution and performance of this Amendment or any of the other Loan Documents or the Borrowing (deeming a Borrowing of at least \$1.00 to occur on the Amendment No. 1 Effective Date), that constitutes a Default or which with giving notice or with a lapse of time or both would constitute a Default, (C) since December 31, 2016, no Material Adverse Effect has occurred and is continuing, (D) there is no condition or circumstance that would impair the ability of the parties to the Borrower's Wholesale Power Contracts and Direct Serve Contracts to perform their obligations thereunder, (E) (x) the consolidated (where applicable) balance sheet and statements of revenues, expenses and patronage capital as of and for the fiscal years ended December 31, 2014, 2015 and 2016 respectively, reported on by KPMG LLP, independent public accountants, and (y) the consolidated (where applicable) balance sheet and

statements of revenues, expenses and patronage capital as of and for the fiscal quarter ended March 31, 2017 (and, if the Amendment No. 1 Effective Date is on or after August 30, 2017, for the fiscal quarter ended June 30, 2017), which has heretofore been furnished by the Borrower to the Lenders, in each case, presents fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower on, where applicable, a consolidated basis as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in this clause (y), and (F) each of the matters set forth in Section 5(b) of this Amendment are true and correct.

(v) favorable written opinions (addressed to the Administrative Agent, the Issuing Lender, the Swingline Lender and the Lenders) of (A) Sullivan, Mountjoy, Stainback & Miller, P.S.C., counsel to the Borrower, in form and substance satisfactory to the Administrative Agent and (B) Orrick Herrington & Sutcliffe LLP, special counsel to the Borrower, as to the enforceability of this Amendment under New York law, in form and substance satisfactory to the Administrative Agent;

(e) Concurrently with delivery by the Borrower to each Lender of a Secured Promissory Note, each of the Lenders shall deliver to the Borrower (i) for retirement, the original Secured Promissory Note dated as of March 5, 2015, delivered to each such Lender under the Credit Agreement and (ii) a consent executed by each Lender and dated as of the Amendment No. 1 Effective Date, substantially in the form attached hereto as Exhibit A, with such changes therein, if any, as shall be approved by the Borrower and the Lenders.

(f) The Borrower shall have paid to each Lender, in immediately available funds, an upfront fee equal to 0.25% (i.e., 25 basis points) of such Lender's final allocated Commitment amount;

(g) No Default shall have occurred or be continuing or would result from the consummation of the transactions contemplated by this Amendment; and

(h) The Administrative Agent and the Lenders shall have received such other documents, information or agreements regarding the Borrower as the Administrative Agent may reasonably request.

## **5. Confirmation of Loan Documents; Representations and Warranties.**

(a) The Borrower hereby reaffirms (i) the Credit Agreement, as amended by this Amendment, (ii) the Loan Documents, and (iii) its obligations to the Administrative Agent and the Lenders thereunder.

(b) The Borrower represents and warrants that (i) no Default has occurred or is continuing or would result from the consummation of the transactions contemplated by this Amendment, (ii) the representations and warranties (other than the representations and warranties

contained in Section 3.04 and Section 3.13 of the Credit Agreement) contained in the Credit Agreement and the other Loan Documents when taken together with, in the case of Section 3.06, the revised Schedule V attached hereto, in the case of Section 3.15 of the Credit Agreement, the revised Schedule II attached hereto and, in the case of Section 3.17 of the Credit Agreement, the revised Schedule IV attached hereto, are true and correct as of the date hereof, other than any such representations and warranties that, by their terms, refer to a specific date other than the date hereof, in which case such representations and warranties are true and correct as of such specific date, (iii) the Borrower has all requisite power to execute, deliver and perform this Amendment, any Notes delivered in connection with this Amendment and any other documents delivered in connection herewith, (iv) the execution, delivery and performance by the Borrower of this Amendment, any Notes delivered in connection with this Amendment and any other documents delivered in connection herewith have been duly authorized by all necessary action of the Borrower and all governmental and other approvals and consents (which includes the Kentucky Public Service Commission approval and authorization permitting the Borrower to enter into the transactions contemplated under this Amendment) therefore have been duly obtained and are in full force and effect and (v) this Amendment, any Notes delivered in connection with this Amendment and any other documents delivered in connection herewith constitute the legal, valid and binding obligations of the Borrower and are enforceable against the Borrower in accordance with their respective terms.

(c) The Borrower (i) agrees that the Administrative Agent and the Lenders have fully complied with their respective obligations under each Loan Document, (ii) agrees that the Borrower has no defenses to the validity, enforceability or binding effect of any Loan Document, and (iii) fully and irrevocably releases any claims of any nature whatsoever that it may now have, whether known or unknown, against any one or more of the Administrative Agent and the Lenders and relating in any way to the Loan Documents or the transactions contemplated thereby.

(d) The Borrower represents and warrants that none of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower to the Lenders in connection with the negotiation of this Amendment and the other Loan Documents delivered hereunder or thereunder (in each case, as modified or supplemented by other information so furnished and taken as a whole) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected information and pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to reasonable at the time.

**6. Costs and Expenses.** The Borrower agrees to pay all reasonable costs and expenses incurred by the Administrative Agent in connection with the preparation and administration of this Amendment, including third-party costs and the fees and expenses of the Administrative Agent's counsel.



**7. References in the Credit Agreement.**

(a) Upon the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of similar import shall mean and be a reference to the Credit Agreement as amended by this Amendment.

(b) Except as specifically amended above, the Credit Agreement and all other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed in all respects.

(c) This Amendment shall not, except as expressly provided in this Amendment, operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement or any other Loan Document.

(d) This Amendment (together with any other document executed and delivered in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

**8. Governing Law.** This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

**9. WAIVER OF JURY TRIAL.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**10. Headings.** Section headings in this Amendment are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

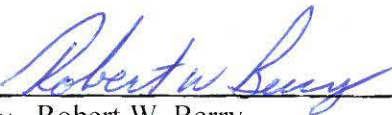
**11. Counterparts.** This Amendment may be executed in counterparts, and such counterparts taken together shall be deemed to constitute one and the same instrument. Facsimile signatures (or signatures transmitted by electronic means, including by email with a “.pdf” copy thereof attached) on this Amendment shall be treated for all purposes as binding on such signatory to the same extent as an original signature. If a party delivers an executed counterpart of this Amendment, such party shall deliver to the Administrative Agent (or its

counsel) such number of original signatures of this Amendment promptly after its effectiveness as the Administrative Agent may request.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized as of the date first written above.

**BIG RIVERS ELECTRIC CORPORATION**, as  
the Borrower

By:   
Name: Robert W. Berry  
Title: President and Chief Executive Officer




**NATIONAL RURAL UTILITIES  
COOPERATIVE FINANCE CORPORATION,**  
as a Lender, the Issuing Lender, the Swingline  
Lender and Administrative Agent

By: 

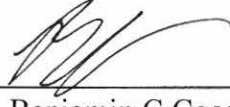
Name: J. Andrew Don

Title: Senior Vice President & Chief Financial  
Officer


REGIONS BANK,  
as a Lender

By:   
Name: Brian Walsh  
Title: Director

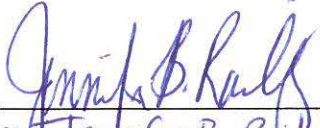
**KEY BANK NATIONAL ASSOCIATION,**  
as a Lender

By:   
Name: Benjamin C Cooper  
Title: Vice President

**KEY BANK NATIONAL ASSOCIATION,**  
as a Lender

By:   
Name: Benjamin C Cooper  
Title: Vice President

**FIFTH THIRD BANK,**  
as a Lender

By:   
Name: Jennifer B. Raible  
Title: Sr. V.P.

**COBANK, ACB,**  
as a Lender

A handwritten signature in black ink, appearing to read "Mike Rehmer", written over a horizontal line.

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

Name: Mike Rehmer

Title: Vice President

## SCHEDULE I

### Lenders' Commitments

<b>Name of Lender</b>	<b>Commitment Amount</b>	<b>Applicable Percentage</b>
National Rural Utilities Cooperative Finance Corporation	\$30,000,000.00	30.00%
Regions Bank	\$20,000,000.00	20.00%
Key Bank National Association	\$20,000,000.00	20.00%
Fifth Third Bank	\$15,000,000.00	15.00%
CoBank, ACB	\$15,000,000.00	15.00%
<b>Total</b>	<b>\$100,000,000.00</b>	<b>100.000000000%</b>

## SCHEDULE II

### Material Agreements and Liens

Item A of Schedule II of the Credit Agreement is hereby revised to add the following:

15. Amendment No. 1 to the Senior Secured Credit Agreement made as of September 19, 2017 among Big Rivers Electric Corporation, as Borrower, and National Rural Utilities Cooperative Finance Corporation, a Lender, Lead Arranger, the Issuing Lender, the Swingline Lender and as Administrative Agent as evidenced by Secured Promissory Notes dated September 19, 2017.
16. Sixth Supplemental and Amendatory Indenture dated as of September 5, 2017 relating to the issuance to National Rural Utilities Cooperative Finance Corporation and several other Lenders party to the Senior Secured Credit Agreement dated as of March 5, 2015 as amended by Amendment No. 1 dated as of September 19, 2017 in the principal amount of \$100,000,000 in lieu of the Notes issued in item 6 of Item A of Schedule II.

Item B of Schedule II of the Credit Agreement is hereby revised to add the following:

9. Sixth Supplemental and Amendatory Indenture dated as of September 5, 2017 relating to the issuance to National Rural Utilities Cooperative Finance Corporation and several other Lenders party to the Senior Secured Credit Agreement dated as of March 5, 2015 as amended by Amendment No. 1 dated as of September 19, 2017 in the principal amount of \$100,000,000 in lieu of the Notes issued in item 6 of Item A of Schedule II.



## **SCHEDULE IV**

### **Wholesale Power Contracts**

Schedule IV of the Credit Agreement is hereby revised to add the following:

28 Letter Agreement dated as of May 27, 2016 between Big Rivers Electric Corporation and Kenergy Corp. (Aleris Rolled Products, Inc.). This item supersedes item 24 of Schedule IV of the Credit Agreement.

## SCHEDULE V

### Litigation

Schedule V of the Credit Agreement is hereby revised to provide as follows:

*Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, Henderson Circuit Court Civil Action No. 09-CI-00693 (the “Henderson Circuit Court Action”); *City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light v. Big Rivers Electric Corporation*, Kentucky Court of Appeals No. 2010-CA-000120-MR; *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, Kentucky Supreme Court No. 2014-SC-000595; *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, American Arbitration Association Case No. 52 198 000173 10.

Big Rivers filed suit in Henderson, Kentucky, Circuit Court on July 31, 2009, requesting an order referring to arbitration a dispute with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “HMP&L”) regarding the rights of the parties respecting “Excess Henderson Energy as defined in the contracts by which Big Rivers operates HMP&L’s Station Two and receives a portion of the generation output of Station Two. By agreement dated as of July 16, 2009, Western Kentucky Energy Corp. (“WKEC”) indemnified Big Rivers against certain adverse consequences of failing to prevail in the arbitration with HMP&L. The obligations of WKEC are guaranteed by its parent company, E.ON U.S. LLC, and its successor in interest. The order of the Henderson Circuit Court directing arbitration was appealed to the Kentucky Court of Appeals, which found that the circuit court order was non-final and non-appealable, and dismissed the appeal for want of appellate jurisdiction. The contractual dispute was submitted to the American Arbitration Association.

The arbitration panel issued an award on May 31, 2012, essentially adopting the HMP&L position in the arbitration. Big Rivers filed a motion on July 16, 2012, in the Henderson Circuit Court asking the court to vacate the arbitrators’ award. The judge ruled against Big Rivers on December 5, 2012. Big Rivers filed a notice of appeal to the Kentucky Court of Appeals on January 2, 2013. The Court of Appeals upheld the lower court. On August 12, 2015, the Kentucky Supreme Court denied Big Rivers’ request for discretionary review of the case.

Counsel for HMP&L wrote counsel for Big Rivers on June 26, 2012, asserting that Big Rivers owes HMP&L for “fixed costs” associated with energy Big Rivers had taken from HMP&L’s “reserve capacity for the period beginning in August 2009 to the date of the award May 30, 2012.” The amount claimed by HMP&L in that letter is \$3,753,013.09.

By letter dated September 14, 2015, from counsel for HMP&L to the lead counsel from the two law firms representing Big Rivers in this matter, HMP&L demanded damages of \$23,801,477.50, and an immediate cession of ongoing sales of Excess Henderson Energy by Big Rivers.

On February 12, 2016, HMP&L filed a petition in the Henderson Circuit Court case initiated by Big Rivers in 2009 that resulted in the arbitration award. The petition seeks damages in an unspecified amount for Big Rivers' alleged wrongful use of this Excess Henderson Energy from July 2009 until Big Rivers stops using the Excess Henderson Energy. Big Rivers has notified WKEC of this petition as required under the July 16, 2009 Indemnification Agreement between the parties. The attorneys retained by WKEC to represent Big Rivers in the original arbitration filed a motion to dismiss the petition on technical grounds. The Henderson Circuit Court ruled that the damages claim can proceed in the current docket. Discovery has commenced in the case. In a discovery response dated September 29, 2016, HMP&L said it is seeking damages from Big Rivers of approximately \$32,216,403 for the period from August 1, 2009 through July 31, 2016. Big Rivers is vigorously contesting the claims asserted in the petition based on substantial procedural and substantive defects in the petition and the claims it purports to assert including, without limitation, the liability of Big Rivers, and the measure and calculation of damages.

*In the Matter of Application of Big Rivers Electric Corporation for a Declaratory Order, Kentucky Public Service Commission, Case No. 2016-00278.*

Big Rivers filed an Application with the Kentucky Public Service Commission ("Commission") on July 29, 2016, seeking a declaratory order that, under the Power Sales Contract between Big Rivers and the City of Henderson and the Utility Commission of the City of Henderson (the City of Henderson and the Utility Commission of the City of Henderson, collectively, "Henderson") regarding operation of Henderson's Station Two, Big Rivers is not responsible for the variable costs of any energy defined as Excess Henderson Energy produced by Station Two that Big Rivers does not take, and that Henderson is responsible for those costs, or in the alternative, if Big Rivers is responsible for these costs under the Power Sales Contract, that the PSC modify that contract to make Henderson responsible for those costs. Big Rivers has been charging those costs to Henderson since June 1, 2016, but Henderson has refused payment. If the Commission rules against Big Rivers, the costs charged to Henderson may have to be expensed by Big Rivers, and the future costs of generating the unwanted Excess Henderson Energy could be the responsibility of Big Rivers.

A hearing in this case was held February 7, 2017. The briefing schedule ends March 21, 2017, after which the case will be submitted to the Commission for decision. The Commission will determine whether it has jurisdiction over the pending dispute, and if so, how the contracts involved should be applied. But the Commission will not award damages.

## EXHIBIT A

### FORM OF CONSENT

Reference is made to the Indenture, dated as of July 1, 2009, between Big Rivers Electric Corporation (the “*Company*”) and U.S. Bank National Association, as Trustee (the “*Trustee*”), as supplemented and amended to the date set forth below (the “*Indenture*”). The undersigned hereby irrevocably consents to the amendment of the Fifth Supplemental Indenture, dated as of February 23, 2015 (the “*Fifth Supplemental Indenture*”), between the Company and the Trustee to reflect in substance the provisions attached as Exhibit A to this Consent. This Consent shall bind the undersigned as the holder of Obligations (as defined in the Indenture) issued under the Indenture and the Fifth Supplemental Indenture and set forth on Exhibit B hereto. The undersigned agrees to take any action or execute any instrument reasonably requested by the Company or the Trustee to evidence its consent hereunder.

Dated: \_\_\_\_\_, 2017

[LENDER]

By: \_\_\_\_\_  
Authorized Representative

EXHIBIT A TO FORM OF CONSENT

AMENDMENTS

TO

FIFTH SUPPLEMENTAL INDENTURE DATED AS OF FEBRUARY 23, 2015

A. The last two sentences of the first paragraph under Section 1.02 of the Fifth Supplemental Indenture are hereby amended to read as follows:

*“The aggregate principal amount of the First Mortgage Notes, Series 2015A which shall be authenticated and delivered and Outstanding at any one time is limited to \$100,000,000. The First Mortgage Notes, Series 2015A shall be dated \_\_\_\_\_, 2017 and are due \_\_\_\_\_, 2020.”*

B. The dated date of March 5, 2015 contained on the first page of the First Mortgage Notes, Series 2015A contained in Exhibit B to the Fifth Supplemental Indenture is hereby amended to have a dated date of September 19, 2017.

**EXHIBIT B TO FORM OF CONSENT**

OBLIGATIONS ISSUED UNDER THE INDENTURE

ISSUE

[\_\_\_\_\_]

AMOUNT

\$[\_\_\_\_\_]

**FIRST AMENDED AND RESTATED CONSOLIDATED  
LOAN CONTRACT**

**Dated as of January 2, 2018**

**between**

**BIG RIVERS ELECTRIC CORPORATION**

**and**

**UNITED STATES OF AMERICA**

RUS Project Designation:  
Big Rivers  
W8 Loan  
X8 Loan

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<b>Schedule 2</b>	<b>Wholesale Power Contracts</b>
<b>Schedule 3</b>	<b>Litigation</b>
<b>Schedule 4</b>	<b>Last Day for An Advance</b>
<b>Schedule 5</b>	<b>Additional Affirmative Covenants</b>
<b>Schedule 6</b>	<b>Additional Negative Covenants</b>
<b>Exhibit A</b>	<b>Equal Opportunity Contract Provisions</b>
<b>Exhibit B</b>	<b>Description of Rating Agency Services</b>

## **FIRST AMENDED AND RESTATED CONSOLIDATED LOAN CONTRACT**

THIS FIRST AMENDED AND RESTATED CONSOLIDATED LOAN CONTRACT, dated as of January 2, 2018, is between BIG RIVERS ELECTRIC CORPORATION (together with any successors and assigns, the "Borrower"), a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, and the UNITED STATES OF AMERICA (the "Government"), acting by and through the Administrator (together with any person succeeding to the powers and rights of the Administrator with respect to this Agreement, the "Administrator") of the Rural Utilities Service (together with any agency succeeding to the powers and rights of the Rural Utilities Service with respect to this Agreement, the "RUS"), and amends and restates that certain Amended and Consolidated Loan Contract, dated as of July 16, 2009, between the Borrower and the Government, acting by and through the Administrator of the RUS, as heretofore amended (the "Existing Loan Contract").

### **RECITALS**

WHEREAS, the Borrower previously incurred, pursuant to the Act (as defined in Article I) and under the Existing Loan Contract, certain indebtedness and other obligations to, or guaranteed by, the Government, acting by and through the Administrator of the RUS, which indebtedness and other obligations are evidenced by the RUS Notes (as defined in Article I); and

WHEREAS, the Borrower has entered into that certain Indenture (as defined in Article I), pursuant to which Borrower has granted a security title to and a security interest in substantially all of its real and personal property to secure the RUS Notes and the certain other obligations secured under the Indenture, and to provide for the authentication and delivery of Additional Obligations, as defined in the Indenture; and

WHEREAS, the Borrower proposes to borrow from the FFB, Twenty-Five Million Six Hundred Thirty Thousand and 00/100 Dollars (\$25,630,000) (the "W8 Loan") and Twenty Million Five Hundred Eleven Thousand and 00/100 Dollars (\$20,511,000) (the "X8 Loan") to finance certain additions and improvements to the System; and

WHEREAS, RUS has committed upon specified terms and conditions to guarantee the repayment of the W8 Loan and the X8 Loan; and

WHEREAS, one of the conditions established by the RUS is the issuance to the RUS of two Credit Enhancement Obligations under the Indenture; and

WHEREAS, the Board of Directors of the Borrower has authorized four new Additional Obligations, as defined in the Indenture, two to be designated as the Future Advance Promissory Notes, (the "W8 FFB Note" and "X8 FFB Note"), and two to be designated as the Reimbursement Notes, (the "W8 Reimbursement Note" and the "X8 Reimbursement Note" and collectively with the W8 FFB Note and the X8 FFB Note, the "W8 and X8 Notes") to be dated their date of authentication and delivery and to be due at such time as shall be agreed to between the Borrower and the RUS and specified in the W8 and X8 Notes; and

WHEREAS, the W8 and X8 Notes will be issued, authenticated and delivered as Additional Obligations under the Indenture by and through a Eighth Supplemental and

Amendatory Indenture dated as of even date with this Agreement (the "Eighth Supplemental Indenture"); and

WHEREAS, the Borrower has complied with all provisions required to issue Additional Obligations provided for in the Indenture; and

WHEREAS, the Borrower desires to execute and deliver this Agreement for the purpose to specifically include the W8 and X8 Notes as Additional Obligations and specifying the form and provisions of the W8 and X8 Notes; and

WHEREAS, all the acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Borrower necessary to secure the payment of the principal of and interest on the W8 and X8 Notes, to make the W8 and X8 Notes to be issued under the Indenture, when executed by the Borrower, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligations of the Borrower, and to constitute the Indenture, as supplemented and amended, a valid and binding lien for the security of all the Obligations, in accordance with its terms, have been done and taken; and the execution and delivery of this Agreement has been in all respects duly authorized.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto amend and restate the Existing Loan Contract to read in its entirety, and agree and bind themselves, as follows:

## **ARTICLE I**

### **DEFINITIONS**

Capitalized terms that are not defined herein shall have the meanings set forth in the Indenture. The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made, in accordance with Accounting Requirements.

"Accounting Requirements" shall mean the requirements of the system of accounts prescribed by the RUS.

"Act" shall mean the Rural Electrification Act of 1936, as amended.

"Advance" or "Advances" shall mean an advance or advances made or approved by the RUS under the W8 FFB Notes or the X8 FFB Notes.

"Agreement" shall mean this First Amended and Restated Consolidated Loan Contract, together with all schedules and exhibits hereto, and also all subsequent supplements or amendments hereto.

"Business Day" shall mean any day that the RUS and FFB are both open for business.

“Capital Assets” shall mean all tangible and intangible utility plant, construction in progress, non-utility property, material supplies and equipment normally used in the Borrower’s system.

“Competitive Transition Charges” means amounts that the Company is authorized or permitted to collect, directly or indirectly, from the ultimate consumers of electric power and energy under state or federal statutes or regulations enacted or promulgated in connection with the opening of the electric markets to retail competition, whether or not such consumers are taking energy supplied directly or indirectly by the Company. It is intended that this definition be broadly construed in order to take into consideration the changing nature of the electric utility industry resulting from the implementation of retail competition.

“Credit Rating” shall mean a rating assigned by a Rating Agency (i) to any long-term indebtedness (that is not subject to Credit Enhancement) (including, without limitation, indebtedness issued by any governmental authority with respect to which the Borrower is an obligor) and secured directly or indirectly under the Indenture or (ii) if a Rating Agency has not assigned a rating to indebtedness of the type described in clause (i) hereof, a “shadow rating” of the Borrower’s senior, secured long-term indebtedness (that is not subject to Credit Enhancement).

“Distributions” shall mean for the Borrower, in any calendar year, to declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other Cash Distributions, to its members, stockholders or consumers; provided, however, that for the purposes of this Agreement a “Cash Distribution” shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, including the rebate of an abatement of wholesale power costs previously incurred pursuant to an order of a state regulatory authority or a wholesale power cost adjustment clause or similar power pricing agreement between the Borrower and a power supplier, but not including the repayment of a membership fee upon termination of a membership.

“Eighth Supplemental Indenture” shall have the meaning set forth in the seventh WHEREAS clause hereof.

“Equity” shall mean the Borrower’s total margins and equities computed in accordance with Accounting Requirements but excluding any Regulatory Created Assets.

“Event of Default” shall have the meaning as defined in Article VII of this Agreement.

“Existing Loan Contract” shall have the meaning set forth in the introductory paragraph of this Agreement.

“FFB” shall mean the Federal Financing Bank, an instrumentality and wholly-owned corporation of the Government, and any successor to the powers and rights thereof with respect to the Outstanding Notes.

“Fitch” shall mean Fitch Ratings and any successor thereto.

“General Manager” shall mean the President and Chief Executive Officer of the Borrower or the person performing the duties of a chief executive officer if no person holds such title and, in the event of any dispute between the Borrower and the Government as to who is the General Manager, the Administrator may designate a person or position that shall be the General Manager for purposes of this Agreement.

“Indenture” shall mean the Indenture, dated as of July 1, 2009, entered into by the Borrower and U.S. Bank National Association, as trustee, and all amendments and supplements thereto.

“Highest Oversight Period” shall mean (x) as to an event described in clause (i) or (iv) below, any period commencing on the date that such event has occurred and ending on the date that such event has ended, and (y) as to an event described in clause (ii) or (iii) below, any period commencing on the date that the Borrower receives written notice from the Administrator that such event has occurred (which notice shall set forth the basis for concluding that such event has occurred) and ending on the date that the Borrower receives written notice from the Administrator that such period has ended:

(i) the Borrower has been assigned a Credit Rating of less than “Ba3” (or its then current equivalent) in the case of Moody’s, “BB-” (or its then current equivalent) in the case of S&P, “BB-” (or its then current equivalent) in the case of Fitch, or the then current equivalent by any other Rating Agency then assigning a Credit Rating;

(ii) the Administrator determines that the System is incapable of providing reliable service to the members of the Borrower pursuant to the terms of the Wholesale Power Contracts;

(iii) the Administrator determines that, as a consequence of any change in the condition, financial or otherwise, operations, properties or business of the Borrower, the Borrower will be unable to perform its material obligations under (a) this Agreement, (b) the Wholesale Power Contracts, (c) the Outstanding Notes, or (d) the Indenture; or

(iv) the occurrence of an Event of Default under the Indenture, or any event which with the passage of time or giving of notice, or both, would constitute an Event of Default under the Indenture.

“Interest Expense” shall mean the interest expense of the Borrower computed pursuant to Accounting Requirements.

“Investment” shall mean any loan or advance to, or any investment in, or purchase or commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assumption or other obligation or liability with respect to the obligations of, any other person, firm or corporation, except investments in securities or deposits issued, guaranteed or fully insured as to payment by the Government or any agency thereof and except any other investments set forth in the RUS Regulations (7 C.F.R. § 1717.655) as excluded from computations of the amounts and types of investments for which RUS approval is required.



“Investment Grade” means a Credit Rating of BBB- (or its then current equivalent) or higher, if issued by S&P or Fitch; Baa3 (or its then current equivalent) or higher, if issued by Moody’s; and any comparable investment grade rating if issued by any other Rating Agency.

“Laws” shall have the meaning as defined in Paragraph (e) of Article II of this Agreement.

“Loans” shall mean the loans and other obligations described in Article III of this Agreement.

“Loan Documents” shall mean, collectively, this Agreement, the Indenture (including the Eighth Supplemental Indenture), the Lockbox Agreement, the RUS Notes and the W8 and the X8 Notes.

“Lockbox Agreement” shall mean the Lockbox Agreement, dated as of July 16, 2009 between the Borrower, U.S. Bank National Association, as trustee, RUS and Old National Bank.

“Material Adverse Effect” shall mean a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower or on the ability of the Borrower to perform its obligations under the Loan Documents.

“Moody’s” shall mean Moody’s Investors Service, Inc. and any successor thereto.

“Net Utility Plant” shall mean the amount constituting the Total Utility Plant of the Borrower, less depreciation, computed in accordance with Accounting Requirements.

“Outstanding Notes” shall mean those notes of the Borrower outstanding on the date hereof payable to the order of FFB, the payment of which is guaranteed by the Government, acting by and through the Administrator of the RUS, pursuant to the Act, if any, and the RUS Notes, and those notes of the Borrower outstanding on the date hereof payable to the order of the Government evidencing loans made by the Government, acting by and through the Administrator of the RUS, pursuant to the Act, or evidencing reimbursement obligations of the Borrower to the Government with respect to the Government’s guarantee of the payment of certain notes payable to the order of FFB, all as specifically identified on Schedule 1 hereto, and all amendments, supplements, extensions and replacements to, of or for such notes.

“Permitted Debt” shall have the meaning set forth in Section 6.26.

“Prior Loan Contracts” shall mean have the meaning as defined in Section 9.16.

“Prudent Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. “Prudent Utility Practice” is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to

include a spectrum of possible practices, methods or acts generally in acceptance in light of the circumstances.

“Rating Agency” shall mean S&P, Moody’s, Fitch or, provided that it is acceptable to the RUS, any other nationally recognized statistical rating organization (within the meaning of the rules of the United States Securities and Exchange Commission).

“Regulatory Created Assets” shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, computed pursuant to Accounting Requirements.

“Restricted Rentals” shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term “finance lease” shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of three years and covering property having an initial cost of \$250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers. Restricted Rentals shall not include any amounts paid under any of the Facility Leases (as defined in the Indenture).

“RUS Notes” shall mean the RUS Series A Note and the RUS Series B Note.

“RUS Regulations” shall mean the rules, regulations and bulletins of general applicability published by the RUS from time to time as such rules, regulations and bulletins exist at the date of applicability thereof, including but not limited to the rules and regulations set forth at 7 C.F.R. 1700, and, unless the context clearly demonstrates a contrary intent, shall also include any rules and regulations of other Federal entities which the RUS is required by law to implement.

“RUS Series A Note” shall mean that RUS 2009 Promissory Note Series A, dated July 16, 2009 in the stated principal amount of \$602,573,536 executed by the Borrower and delivered to the Government.

“RUS Series B Note” shall mean that RUS 2009 Promissory Note Series B, dated July 16, 2009 in the stated principal amount of \$245,530,257.30 executed by the Borrower and delivered to the Government.

“Special Construction Account” shall have the meaning as defined in Section 6.23.

“Subordinated Indebtedness” shall mean secured indebtedness of the Borrower subordinated to the prior payment of the RUS Notes.

“Subsidiary” shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower’s control, as defined by Accounting Requirements.

“S&P” shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC and any successor thereto.

“System” shall have the meaning as defined in the Indenture.

“Total Assets” shall mean an amount constituting the total assets of the Borrower as computed pursuant Accounting Requirements, but excluding any Regulatory Created Assets.

“Total Utility Plant” shall mean the amount constituting the total utility plant (gross) of the Borrower computed in accordance with Accounting Requirements.

“Wholesale Power Contracts” shall mean, collectively and individually, the wholesale power contracts in effect between the Borrower and each of its member distribution cooperatives, which are described in the attached Schedule 2, and all amendments, supplements or replacements thereto or thereof.

“W8 and X8 Notes” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“W8 FFB Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“W8 Loan” shall have the meaning set forth in the third WHEREAS clause hereof.

“W8 Reimbursement Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“X8 FFB Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

“X8 Loan” shall have the meaning set forth in the third WHEREAS clause hereof.

“X8 Reimbursement Note” shall have the meaning set forth in the sixth WHEREAS clause hereof.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

Recognizing that the RUS is relying hereon, the Borrower represents and warrants, as of the date of this Agreement, as follows:

(a) *Organization; Power, Etc.* The Borrower: (i) is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Loan Documents; (iv) has duly and lawfully obtained and maintained all licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its

business or required by applicable Laws and (v) is eligible to obtain the financial assistance from the RUS guaranteed by this Agreement.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and do not violate any provision of law or of the Articles of Incorporation or Bylaws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) *Consents.* No consent, permission, authorization, order or license of any governmental authority is necessary in connection with the execution, delivery or performance of the Loan Documents, except such as have been obtained and are in full force and effect.

(d) *Binding Agreement.* Each of the Loan Documents and the Wholesale Power Contracts is, or when executed and delivered will be, the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(e) *Compliance With Laws.* The Borrower is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws"), the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

(f) *Litigation.* Attached as Schedule 3 hereto is a list of all pending or, to the Borrower's knowledge, threatened legal, arbitration or governmental actions or proceedings to which, as of the date of this Agreement, the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed to the RUS in writing.

(g) *Financial Statements, No Material Adverse Change; Etc.* The financial statements, including RUS Form 12, submitted to RUS fairly and fully present the financial condition of the Borrower and the results of its operations as of December 31, 2016 and were prepared in accordance with Accounting Requirements consistently applied. Since December 31, 2016, there has been no material adverse change in the financial condition or operations of the Borrower.

(h) *Budgets; Projections; Etc.* All budgets, projections, feasibility studies, appraisals, and other documentation submitted by the Borrower to the RUS and any Rating Agency then assigning a Credit Rating are based on assumptions that are reasonable and realistic, and as of the date hereof, no fact has come to light, and no event or transaction has occurred, which would cause any assumption made therein not to be reasonable or realistic.

(i) *Location of Properties.* All property and interests therein of the Borrower are located in the states and counties identified in the Indenture.

(j) *Principal Place of Business; Records.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in Section 9.2.

(k) *Subsidiaries.* The Borrower has no Subsidiaries.

(l) *Defaults Under Other Agreements.* The Borrower is not in default under any agreement or instrument under which the Borrower is a party or to which any of its property is subject that could reasonably be expected to have a Material Adverse Effect.

(m) *Title to Property.* As to the property which is included in the description of the Trust Estate, the Borrower holds good and marketable title to all of its real property and owns all of its personal property free and clear of any lien or encumbrance other than Permitted Exceptions and liens permitted by Section 13.6 of the Indenture.

(n) *Survival.* All representations and warranties made by the Borrower herein or made in any certificate delivered pursuant hereto shall survive the making of the Advances.

## ARTICLE III

### THE LOANS

#### Section 3.1. The Loans

The Borrower has borrowed funds from the Government, acting by and through the Administrator of the RUS, evidenced by the RUS Notes, has agreed to reimburse the Government, acting by and through the Administrator of the RUS, for the amounts borrowed pursuant to the terms of the RUS Notes.

#### Section 3.2. No Further Advances

The Borrower acknowledges and agrees that all amounts to be advanced to the Borrower under the RUS Notes have been advanced and the Government, acting by or through the Administrator of the RUS, is under no obligation to make any further advances to the Borrower under the RUS Notes.

#### Section 3.3. Interest Rates and Payment

(a) *Interest Rates.* The RUS Notes and the W8 and X8 Notes shall be payable and bear interest, as therein provided.

(b) *Electronic Funds Transfer.* Except as otherwise prescribed by the RUS, the Borrower shall make all payments on the RUS Notes and the W8 and X8 Notes utilizing electronic funds transfer procedures as specified by the RUS.

### **Section 3.4. Prepayment**

(a) The Borrower may prepay the RUS Notes in whole or in part in the sole discretion of the Borrower without penalty or prepayment premium, provided, however, in no event shall such a voluntary prepayment of the RUS Series B Note be deemed an acceleration or cause an adjustment to the principal thereof.

(b) The Borrower has no right to prepay the W8 and X8 Notes in whole or in part except such rights, if any, as are expressly provided for in such Notes or as may be provided by Law.

### **Section 3.5. Additional Obligations**

(a) The Borrower hereby agrees to cause to be established under its Indenture an Additional Obligation known as and entitled the Future Advance Promissory Note – W8 (sometimes referred to herein as the W8 FFB Note) and an Additional Obligation known as and entitled the Reimbursement Note – W8 (sometimes referred to herein as the W8 Reimbursement Note), the form, terms and conditions of which shall be substantially as set forth in this Article III and Sections 1.02 and 1.03 of the Eighth Supplemental Indenture.

The aggregate principal amount of the W8 FFB Note which may be authenticated and delivered and Outstanding at any one time is limited to Twenty-Five Million, Six Hundred Thirty Thousand and 00/100 Dollars (\$25,630,000). The W8 FFB Note may be advanced in multiple advances.

(b) The Borrower hereby agrees to cause to be established under its Indenture an Additional Obligation known as and entitled the Future Advance Promissory Note – X8 (defined herein as the X8 FFB Note) and an Additional Obligation known as and entitled the Reimbursement Note – X8 (sometimes referred to herein as the X8 Reimbursement Note), the form, terms and conditions of which shall be substantially as set forth in this Article III and Sections 1.02 and 1.03 of the Eighth Supplemental Indenture.

The aggregate principal amount of the X8 FFB Note which may be authenticated and delivered and Outstanding at any one time is limited to Twenty Million Five Hundred Eleven Thousand and 00/100 Dollars (\$20,511,000). The X8 FFB Note may be advanced in multiple advances.

### **Section 3.6. Form of W8 and X8 Notes**

The W8 and X8 FFB Notes and W8 and X8 Reimbursement Notes shall be promissory notes substantially in the forms specified by FFB and the RUS, respectively, and the Trustee's authentication certificate to be executed on the W8 and X8 Notes shall be in the form set forth in Section 2.3 of the Indenture, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Indenture. The terms and conditions of the W8 and X8 Notes are by this reference incorporated herein.



### **Section 3.7. Use of Proceeds of the W8 and X8 Notes**

(a) The Borrower shall use the proceeds of the loan evidenced by the W8 FFB Note to finance the costs of construction of system extensions and additions described on the RUS Form 740c attached to the Administrator's letter to the Borrower dated September 25, 2016 referencing the W8 Loan (the "September 25 Letter").

(b) The Borrower shall use the proceeds of the loan evidenced by the X8 FFB Note to finance the costs of construction of system extensions and additions described on the RUS Form 740c attached to the Administrator's letter to the Borrower dated September 30, 2016 referencing the X8 Loan (the "September 30 Letter").

### **Section 3.8. Last Day for an Advance**

Funds will only be advanced under the X8 FFB Note or the W8 FFB Note pursuant to this Agreement and the X8 FFB Note or W8 FFB Note, as applicable, on or before the "Last Day for an Advance", as specified in the X8 FFB Note or the W8 FFB Note, as applicable. No funds will be advanced under the X8 FFB Note or W8 FFB Note subsequent to the applicable Last Day for an Advance unless prior to such date the Administrator has extended this date by written agreement. However, under no circumstances shall the RUS ever make or approve an Advance under the X8 FFB Note or the W8 FFB Note, as applicable, regardless of the applicable Last Day for an Advance or any extension by the Administrator, later than September 30 of the fifth year after the "Fiscal Year of Obligation" identified in Schedule 4 hereto for the X8 FFB Note or the W8 FFB Note, as applicable, if such date would result in the RUS obligating or permitting Advances of funds contrary to the Antideficiency Act, 31 U.S.C. § 1341.

## **ARTICLE IV**

### **CONDITIONS OF LENDING**

#### **Section 4.1. General Conditions**

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied (all documents, certificates and other evidence of such conditions are to be satisfactory to the RUS in its discretion; such satisfaction (or waiver thereof) to be evidenced by the execution by the RUS of this Agreement):

(a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for the RUS;

(b) *Loan Documents.* The RUS shall receive duly executed originals of this Agreement;

(c) *Authorization.* The RUS shall receive evidence satisfactory to it that all corporate documents and proceedings of the Borrower necessary for duly authorizing the execution, delivery and performance of this Agreement have been obtained and are in full force and effect; and

(d) *Opinion of Counsel.* The RUS shall receive an opinion of counsel for the Borrower (who shall be acceptable to the RUS) with respect to this Agreement, in form and content acceptable to the RUS.

**Section 4.2. Conditions to Advances Under the W8 FFB Note and the X8 FFB Note**

(a) *Conditions to Initial Advance.* The obligation of RUS to approve the initial Advance under the W8 FFB Note and the X8 FFB Note is subject to the fulfillment of the following conditions and the submission to the RUS of proper advance request, together with the fulfillment of each of the conditions set forth in clause (b) below:

(1) With respect to the W8 Loan, the RUS has entered into a contract of guarantee with Borrower, and the FFB has agreed, with RUS approval, to make Borrower a guaranteed loan of \$25,630,000 to finance the costs of construction of system extensions and additions described on the RUS Form 740c attached to the September 25 Letter;

(2) With respect to the X8 Loan, the RUS has entered into a contract of guarantee with Borrower, and the FFB has agreed, with RUS approval, to make Borrower a guaranteed loan of \$20,511,000 to finance the cost of construction of system extensions and additions described on the RUS Form 740c attached to the September 30 Letter;

(3) Borrower has submitted evidence, in form and substance satisfactory to the Administrator, that the conditions in the contract of guarantee have been satisfied to the extent and in the manner prescribed by the Administrator;

(4) The RUS shall receive evidence satisfactory to it that all proceedings of the Kentucky Public Service Commission authorizing the execution and the delivery of the Eighth Supplemental Indenture have been obtained and are in full force in effect;

(5) Borrower has submitted evidence, in form and substance satisfactory to the Administrator, that Borrower has duly authorized, executed, and has delivered to the Administrator the W8 FFB Note or the X8 FFB Note, as applicable, and the W8 Reimbursement Note or the X8 Reimbursement Note, as applicable, in the manner prescribed by the Administrator;

(6) Borrower has submitted evidence, in form and substance satisfactory to the Administrator, that the W8 Notes or the X8 Notes, as applicable, have been secured under the Indenture, or a supplement thereof, which is in form and substance satisfactory to the Administrator; and

(7) Borrower has provided any and all certifications and any related documentation required under the Indenture to U.S. Bank National Association, as Trustee. In addition, the Borrower has provided any and all certifications and any related documentation required under this Agreement to RUS.



(b) *Conditions to any Advance.* The obligation of the RUS to approve any Advance under the W8 FFB Note or the X8 FFB Note is subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to the RUS in its reasonable discretion; such satisfaction (or waiver thereof) to be evidenced by the approval or making of the requested Advance):

(1) *Continuing Representations and Warranties.* That the representations and warranties of the Borrower contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date (except for any representation or warranty limited by its terms to a specific date; provided that the representations contained in Paragraph (g) of Article II shall be deemed made as of and since the date of the last audited financials of the Borrower);

(2) *Wholesale Power Contract.* That the Borrower shall not be in default under the terms of, or contesting the validity of, any Wholesale Power Contract;

(3) *Material Adverse Effect.* That no event shall have occurred since the date hereof that has had or is likely to have a Material Adverse Effect;

(4) *Event of Default.* That no Event of Default, and no event which with the passage of time or giving of notice or both would constitute an Event of Default, shall have occurred and be continuing, or shall have occurred after giving effect to such Advance on the books of the Borrower;

(5) *Requisitions.* That the Borrower shall have requisitioned such Advance by submitting a requisition to the RUS in form and substance satisfactory to the RUS;

(6) *Flood Insurance.* That for any such Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Borrower and located in such a flood hazard area, the Borrower shall have submitted evidence, in form and substance satisfactory to the RUS or the RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Borrower has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulation;

(7) *Compliance With this Agreement and Indenture.* That the Borrower is in material compliance with this Agreement and the Indenture;

(8) *Oversight Period.* That a Highest Oversight Period shall not exist;

(9) *Application of Advances.* That the Borrower agrees to apply the proceeds of the Advances under the W8 FFB Note and the X8 FFB Note to pay the costs, or reimburse the costs paid, by or on behalf of the Borrower to make the system extensions and additions described on the applicable RUS Form 740c attached to the September 25 Letter or the September 30 Letter, respectively;

(10) *Additional Documents.* That the Borrower agrees to provide or cause to be provided to RUS such additional documents as RUS may reasonably request from the Trustee;

(11) *Conditions Precedent to Advance.* That all conditions precedent under the Indenture and this Agreement to such Advance have been satisfied or waived, that the Trustee has delivered its certification required in connection with each Advance pursuant to Section 4.6 of the Indenture and that RUS has received a copy of such certification; and

(12) *Indenture Filing.* That the Indenture or any supplements thereto have been duly recorded and filed in all required jurisdictions to evidence the Indenture lien on the Trust Estate.

## **ARTICLE V**

### **AFFIRMATIVE COVENANTS**

#### **Section 5.1. Generally**

Unless otherwise agreed to in writing by the RUS, while this Agreement is in effect, the Borrower shall duly observe each of the affirmative covenants contained in this Article V.

#### **Section 5.2. Performance Under Loan Documents**

The Borrower shall duly observe and perform all of its obligations under each of the Loan Documents.

#### **Section 5.3. Annual Certification**

Within ninety (90) days after the close of each fiscal year (or, if the Borrower has delivered written notice to the RUS prior to the expiration of such ninety (90) day period that the Borrower has determined in good faith that an additional thirty (30) days for such delivery is necessary or advisable, then within one hundred twenty (120) days after the close of the fiscal year with respect to which such notice has been delivered), the Borrower shall deliver to the RUS a written statement signed by its General Manager, stating that during such year the Borrower has fulfilled its obligations under the Loan Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to the General Manager and the nature and status thereof.

#### **Section 5.4. Rates and Margins for Interest Ratios**

(a) *Prospective Requirement.* The Borrower shall design and implement rates for utility service furnished by it to maintain, on an annual basis, the Margins for Interest Ratio specified in Section 13.14 of the Indenture.

(b) *Prospective Notice of Change in Rates.* The Borrower shall give the RUS sixty (60) days' written notice prior to the effective date of any proposed change in the Borrower's general rate structure.

(c) *Routine Reporting of Margins for Interest Ratio.* The Borrower shall report to the RUS, no later than 45 days after December 31 of each year, in such written format as the RUS may require, the Margins for Interest Ratio that was achieved during the preceding 12-month period ending on December 31 of such year.

(d) *Reporting Non-Achievement of Retrospective Requirement.* If the Borrower fails to achieve the Margins for Interest Ratio specified in Section 13.14 of the Indenture for any fiscal year, it must promptly notify RUS in writing to that effect.

(e) *Corrective Plans.* Within thirty (30) days of (i) sending a notice to the RUS under paragraph (d) above that shows the Margins for Interest Ratio specified by Section 13.14 of the Indenture was not achieved for any fiscal year, or (ii) being notified by the RUS that the Margins for Interest Ratio specified by Section 13.14 of the Indenture was not achieved for any fiscal year, whichever is earlier, the Borrower in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken to achieve the specified Margins for Interest Ratio on a timely basis.

(f) *Noncompliance.* Failure to design and implement rates pursuant to paragraph (a) of this section and failure to develop and implement the plan in accordance with the terms of paragraph (e) of this section shall constitute an Event of Default under this Agreement in the event that RUS so notifies the Borrower to that effect under Section 7.1(c) of this Agreement.

## **Section 5.5. Financial Books**

The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all of the dealings, business and affairs of the Borrower and its Subsidiaries, if any, in accordance with any applicable Accounting Requirements.

## **Section 5.6. Rights of Inspection**

The Borrower shall afford the RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the System, any other property encumbered by the Indenture, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

### **Section 5.7. Real Property Acquisition**

In acquiring real property, the Borrower shall comply in all material respects with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and 49 C.F.R. part 24, referenced by 7 C.F.R. part 21, to the extent applicable to such acquisition.

### **Section 5.8. Financial Reports**

Within 120 days of the end of each fiscal year, the Borrower shall cause to be prepared and furnished to the RUS a full and complete annual report of its financial condition and of its operations in form and substance satisfactory to the RUS, audited and certified by an Independent certified public accountant satisfactory to the RUS and accompanied by a report of such audit in form and substance reasonably satisfactory to the RUS. The Borrower shall also furnish to the RUS from time to time such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as the RUS may request or RUS Regulations require.

### **Section 5.9. Miscellaneous Reports and Notices**

The Borrower shall furnish to the RUS:

(a) *Notice of Default.* Promptly after becoming aware thereof, notice of: (i) the occurrence of any Event of Default under this Agreement or event which with the giving of notice or the passage of time, or both, would become an Event of Default; and (ii) the receipt of any notice given pursuant to the Indenture with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an "Event of Default" under the Indenture and (iii) the occurrence of any event under any agreement which with the giving of notice or the passage of time, or both, could become an "Event of Default" under such agreement and result in a Material Adverse Effect.

(b) *Notice of Non-Environmental Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency or instrumentality affecting the Borrower which, could reasonably be expected to have a Material Adverse Effect.

(c) *Notice of Environmental Litigation.* Without limiting the provisions of Section 5.9(b) above, promptly after receipt thereof, notice of the receipt of all pleadings, orders, complaints, indictments, or other communications alleging a condition that may require the Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations or such laws, or which claim personal injury or property damage to any person as a result of environmental factors or conditions for which the Borrower is not fully covered by insurance, or which could reasonably be expected to have a Material Adverse Effect.

(d) *Notice of Application for Competitive Transition Charges.* Promptly, but no later than 60 days prior to submission to any approval authority, including without limitation, any regulatory or legislative authority, written notice of an application for authority to collect Competitive Transition Charges. Without limiting the right of RUS to request other information, RUS has the right to request the Borrower to provide to RUS a written appraisal or other financial assessment of the Competitive Transition Charges.

(e) *Notice of Change of Place of Business.* Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(f) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could reasonably be expected to have a Material Adverse Effect.

(g) *Ratings.* Promptly after receipt thereof, copies of Credit Ratings and copies of any reports with respect to the Borrower or its Credit Rating issued by any Rating Agency.

(h) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter that has had or could reasonably be expected to have a Material Adverse Effect.

(i) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations, properties or business of the Borrower as the RUS may, from time to time, reasonably request.

#### **Section 5.10. Variable Rate Indebtedness**

In connection with the furnishing of its annual report to the RUS pursuant to Section 5.8, the Borrower shall report to the RUS, in such written format as may be acceptable to the RUS, the specific maturities of all of the Borrower's outstanding indebtedness and, the interest rates applicable thereto, including, without limitation, with respect to any indebtedness not bearing a fixed rate through the maturity of such indebtedness, the method and timing for adjustment and readjustment of the applicable interest rate.

#### **Section 5.11. Special Construction Account**

The Borrower shall establish an account designated by the corporate name of the Borrower followed by the words "Special Construction Account." The Special Construction Account shall be insured to the extent insurable by the Federal Deposit Insurance Corporation or other federal agency acceptable to the RUS. The Borrower shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by a RUS loan fund audit, into the Special Construction Account. Moneys in the Special Construction Account shall be used solely for the purposes for which the Advance was made or for such other purposes as may be approved by the RUS.

#### **Section 5.12. Compliance With Laws**



The Borrower shall operate and maintain the System and its properties in compliance in all material respects with all applicable Laws.

#### **Section 5.13. Lockbox Agreement**

The Borrower shall not, without first complying with the requirements of Section 9.1, amend, supplement or otherwise modify the Lockbox Agreement. In the event: (a) the Borrower no longer has two Investment Grade credit ratings from at least two Rating Agencies; (b) the Borrower's total current and accrued liabilities exceed the Borrower's total current and accrued assets; (c) the Administrator determines the System is incapable of providing reliable service to the members of the Borrower pursuant to the terms of the Wholesale Power Contracts; (d) the Administrator determines that as a consequence of any change in the condition, financial or otherwise, operations, properties or business of the Borrower, the Borrower will be unable to perform its material obligations under (i) this Agreement, (ii) the Wholesale Power Contracts, (iii) the RUS Notes, or (iv) the Indenture; or (e) there is an Event of Default under the Indenture, or any event that with the passage of time or giving of notice, or both, would constitute an Event of Default under the Indenture, the Borrower shall, if so directed in writing by the Administrator of the RUS, (a) deposit, pursuant to the Lockbox Agreement, all cash proceeds of the Trust Estate, including, without limitation, checks, money and the like (other than cash proceeds deposited or required to be deposited with the Trustee pursuant to the Indenture), which cash proceeds shall include, without limitation, all payments by members of the Borrower on account of the Wholesale Power Contracts, in separate deposit or other accounts, segregated from all other monies, revenues and investments of the Borrower, and (b) take all such other actions as the RUS shall request to continue perfection of the lien of the Indenture in such proceeds for the benefit of all Holders of the Outstanding Secured Obligations.

#### **Section 5.14. Property Maintenance**

The Borrower shall maintain and preserve its System in compliance in all material respects with the provisions of the Indenture, RUS Regulations, all applicable Laws, and Prudent Utility Practice.

#### **Section 5.15. Load Forecast**

The Borrower shall prepare and use load forecasts with respect to its electric loads and future energy and capacity requirements in conformance with RUS Regulations.

#### **Section 5.16. Long Range Engineering Plans and Construction Work Plans**

The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with RUS Regulations.

#### **Section 5.17. Design Standards, Construction Standards and List of Materials**

The Borrower shall use design standards, construction standards, and lists of acceptable materials in conformance with RUS Regulations.

#### **Section 5.18. Plans and Specifications**

The Borrower shall submit plans and specifications for construction to RUS for review and approval, in conformance with RUS Regulations, if the construction will be financed in whole or in part by a loan made or guaranteed by RUS.

#### **Section 5.19. Standard Forms of Construction Contracts, and Engineering and Architectural Services Contracts**

The Borrower shall use the standard forms of contracts promulgated by the RUS for construction, procurement, engineering services and architectural services, in conformance with RUS Regulations, if the construction, procurement, or services will be financed in whole or in part by a loan made or guaranteed by the RUS.

#### **Section 5.20. Contract Bidding Requirements**

The Borrower shall follow the RUS contract bidding procedures in conformance with RUS Regulations when contracting for construction or procurement, if the construction or procurement will be financed in whole or in part by a loan made or guaranteed by the RUS.

#### **Section 5.21. Nondiscrimination**

(a) *Equal Opportunity Provisions in Construction Contracts.* The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from the RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Exhibit A attached hereto entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Borrower.* The Borrower further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Sanctions and Penalties.* The Borrower agrees that it shall cooperate actively with the RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish the RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the RUS's primary responsibility for securing compliance. The Borrower further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the RUS or the Secretary of Labor pursuant to Part II,

Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings the RUS may cancel, terminate or suspend in whole or in part this contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

#### **Section 5.22. "Buy American" Requirements**

The Borrower shall use or cause to be used in connection with the expenditures of funds if such funds were obtained in whole or in part by a loan being made or guaranteed by the RUS only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or any eligible country substantially all from articles, materials, and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent the RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that has with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

#### **Section 5.23. Depreciation Plan**

The Borrower shall adopt as its depreciation rates only those that have been previously approved for the Borrower by RUS (through RUS Regulation or by specific approval by RUS). The Borrower shall not file with or submit for approval of any regulatory bodies depreciation rates which are inconsistent with those approved for the Borrower by RUS.

#### **Section 5.24. Maintenance of Credit Ratings**

(a) *Maintenance of Credit Ratings.* As long as there remains any RUS Note, the Borrower shall (i) maintain a Credit Rating from at least two Rating Agencies and (ii) continuously subscribe with a Rating Agency for the services described in Exhibit B attached hereto.

(b) *Reporting Non-achievement of Investment Grade Credit Rating.* If the Borrower fails to maintain two Credit Ratings of Investment Grade, it must notify RUS in writing to that effect within five (5) days after becoming aware of such failure.

(c) *Corrective Plans.* Within thirty (30) days of the date on which the Borrower fails to maintain two Credit Ratings of Investment Grade, the Borrower in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken that are reasonably expected to achieve two Credit Ratings of Investment Grade.

(d) *Noncompliance.* Failure to implement a corrective plan developed in accordance with paragraph (c) of this section shall constitute an Event of Default under this Agreement.



### **Section 5.25. Additional Affirmative Covenants.**

The Borrower also shall comply with the additional affirmative covenants identified in Schedule 5 hereto.

## **ARTICLE VI**

### **NEGATIVE COVENANTS**

#### **Section 6.1. General**

Unless otherwise agreed to in writing by the RUS, while this Agreement is in effect, the Borrower shall duly observe each of the negative covenants set forth in this Article VI.

#### **Section 6.2. Acquisition of Capital Assets**

The Borrower shall not, without first complying with the requirements of Section 9.1, extend or add to its System by purchasing, constructing, leasing or otherwise acquiring Capital Assets, including Capital Assets that constitute utility or non-utility plant, with funds from sources other than loans made or guaranteed by RUS in the case of:

(a) Generating facilities if the total expenditures for the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed the lesser of \$10 million or thirty percent (30%) of the Borrower's Equity;

(b) Existing electric facilities or systems in service whose purchase price, or capitalized value in the case of a lease, exceeds ten percent (10%) of the Borrower's Net Utility Plant; or

(c) Any new project to serve an end user whose annual kWh purchases or maximum annual kW demand is projected to exceed 25 percent of the Borrower's total kWh sales or maximum kW demand in the year immediately preceding the start of construction of facilities.

#### **Section 6.3. Disposition or Releases of Capital Assets**

The Borrower shall not, without first complying with the requirements of Section 9.1, voluntarily or involuntarily sell, convey, transfer, lease, as lessor, or otherwise dispose of any portion of its business or Capital Assets, or request the release of or release any Capital Assets from the lien of the Indenture or enter into contracts therefor in any calendar year except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 6.3, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." Notwithstanding the foregoing, the use by Borrower of the proceeds of any such sale, conveyance, transfer, lease or other disposition shall be in compliance with the Indenture.

#### **Section 6.4. Highest Oversight Period.**

During a Highest Oversight Period, the Borrower shall not, without the prior written approval of RUS, purchase, construct, lease or otherwise acquire, or sell, transfer, lease or otherwise dispose of, any capital asset, or enter into any agreement therefor.

**Section 6.5. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets**

The Borrower shall not consolidate or merge with, or sell all or substantially all of its business or assets, except to the extent it is expressly permitted under the Indenture.

**Section 6.6. Limitations on Employment and Retention of General Manager**

At any time an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing, the Borrower shall not, without the prior written approval of the RUS, enter into an employment relationship with any person to serve as General Manager of the System. If an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing and the RUS requests the Borrower to terminate the employment of its General Manager, the Borrower shall do so within thirty (30) days after the date of such request. All contracts in respect of the employment of the General Manager or for the operation of the Utility System or the Electric System, hereafter entered into shall contain provisions to permit compliance with this Section 6.6.

**Section 6.7. Limitations on Certain Types of Contracts**

(a) *Approval of Certain Contracts.* The Borrower shall not, without first complying with the requirements of Section 9.1, enter into any of the following:

(i) Any contract for the management and operation of all or a material portion of its System;

(ii) Any contract for the purchase, exchange or sale of electric power or energy that has a term exceeding two (2) years;

(iii) Any contract for the purchase or sale of interconnection, interchange wheeling, transmission, pooling, ancillary services pooling or similar power supply arrangements that has a term exceeding two (2) years;

(iv) Any contract for construction or procurement or for architectural and engineering services in connection with the Borrower's System if the project is financed or will be financed, in whole or in part, by a loan made or guaranteed by the RUS;

(v) Any amendment or modification to any of the Wholesale Power Contracts, including the Schedules thereto, including the Wholesale Power Contracts listed in the attached Schedule 2, except that the Borrower may amend or modify provisions specifying delivery points.

(b) *Terminations.* The Borrower shall not, without first complying with the requirements of Section 9.1, exercise any option to terminate any contract, including, without limitation, any Wholesale Power Contract, if such contract, based upon its nature, remaining term (not taking into account any option of the Borrower to terminate) and size, would be required to be approved by the RUS pursuant to paragraph (a) of this Section 6.7 if the Borrower were to have entered into such contract on the proposed termination date. The Borrower further agrees at the written direction of the RUS to exercise any option to terminate a contract if the exercise by the Borrower of that option would require compliance with the requirements of Section 9.1 pursuant to the immediately preceding sentence unless the exercise of such termination right could reasonably be expected to have a Material Adverse Effect.

(c) *Determination of Term.* For purposes of this Section 6.7, the term of any contract shall be determined in accordance with this Section 6.7(c). The term of any contract shall be the period during which performance (other than payment) is to occur and not the period commencing when such contract is executed. The term of any contract shall be based upon the period prior to the first date upon which the Borrower could, at its option, terminate the contract (taking into account any notice period required for termination).

(d) *Amendments; Extensions.* Any amendment or modification to an existing contract (including an extension thereof) shall be governed by this Section 6.7 only to the extent such specific amendment or modification (and not the contract as a whole), judged as if it were a separate contract, would be required to be approved by the RUS pursuant to paragraph (a) of this Section 6.7.

#### **Section 6.8. Limitations on Loans, Investments and Other Obligations**

The Borrower shall not, without first complying with the requirements of Section 9.1, make any loan or advance to, or make any Investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the Act and RUS Regulations. In computing any permissible level of Investments in any person, firm or corporation in accordance with this Section 6.8 and the RUS Regulations, the Borrower's existing capital contribution to Big Rivers Leasing shall not be included as contributing to the level of aggregate permissible Investments.

#### **Section 6.9. Rate Changes**

The Borrower shall not, without first complying with the requirements of Section 9.1, increase or reduce its rates.

#### **Section 6.10. Indenture Restrictions**

Notwithstanding the provisions of the Indenture, the Borrower shall not, without first complying with the requirements of Section 9.1:

(a) consolidate or merge with any other corporation or convey or transfer the Trust Estate under the Indenture substantially as an entirety, or otherwise reorganize its corporate structure to transfer functions or any substantial part of the Trust Estate to any other Person;

(b) elect pursuant to Section 1.1D of the Indenture to apply Accounting Requirements in effect as of the date of execution and delivery of the Indenture;

(c) include as Property Additions, under any provision of the Indenture, any property that would not qualify as Property Additions but for paragraph C of the definition of Property Additions, or sell, lease or sublease any portion of the Trust Estate pursuant to paragraph H of Section 5.1 of the Indenture;

(d) submit an Available Margins Certificate under Article IV of the Indenture for the purpose of issuing Additional Obligations unless such Certificate is accompanied by an Independent Accountant's Certificate stating in substance that nothing came to the attention of such Accountant in connection with its unaudited review of the applicable period that would lead such Accountant to believe that there was any incorrect or inaccurate statement in such Certificate;

(e) enter into a Supplemental Indenture pursuant to Section 12.1H of the Indenture;

(f) enter into a Supplemental Indenture pursuant to Section 12.1B or 12.1C of the Indenture if (i) the Holders of the Obligations issued under such Supplemental Indenture are granted greater security rights in and to the Trust Estate than those security rights enjoyed by the Government in its capacity as a Holder of Obligations under the Indenture, provided, however, that neither (I) the existence of Credit Enhancement nor (II) the creation and maintenance of debt service or similar funds for the payment of the principal and interest on Obligations issued under such Supplemental Indenture (to the extent such debt service or other similar funds are funded from the proceeds of the issuance of such Obligations or funded in connection with the refinancing of other debt by such Obligations), shall constitute greater security rights in and to the Trust Estate requiring the Borrower to comply with the requirements of Section 9.1; (ii) the Supplemental Indenture provides for covenants, restrictions, limitations, conditions, events of defaults or remedies not applicable to all Obligations then Outstanding or not equally available to all Holders of Obligations then Outstanding, provided, however, that provisions for covenants and events of default that relate solely to assuring that the interest on such Obligations (or other indebtedness secured by such Obligations) is excludable from the gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, shall not constitute the providing of covenants or events of default requiring the Borrower to comply with the requirements of Section 9.1; or (iii) the Obligations issued under such Supplemental Indenture, or the indebtedness secured by such Obligations, can be (a) accelerated or (b) effectively accelerated through a mandatory purchase or similar mechanism, in either case, as a consequence of a breach or default by the Borrower under the related loan agreement or similar agreement entered into in connection with such Obligation or indebtedness, provided, however, that acceleration and similar rights may be granted to development authorities and trustees without first complying with the requirements of Section 9.1 in connection with the issuance of Obligations (or other indebtedness secured by such Obligations) the interest on which is excludable from the gross

income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such acceleration and similar rights are substantially similar to those currently granted to development authorities and trustees in connection with the Existing Obligations;

(g) create or incur or suffer or permit to be created or incurred or to exist any pledge of current assets secured under the Indenture to secure current liabilities;

(h) take any of the following actions:

(i) provide under the Indenture a Certificate of an Appraiser who is not Independent if the value of the property or securities to which such certificate applies is greater than \$500,000;

(ii) provide under the Indenture a Certificate of an Engineer who is not a licensed professional with respect to any project if the cost of such project is greater than \$50,000; or

(iii) provide under the Indenture a Certificate of an Engineer who is not Independent and a licensed professional with respect to the fair value or repair cost of any project if either (A) the fair value or repair cost of such project is greater than \$5,000,000 or (B) RUS has requested in writing such certificate to be provided by an Engineer who is Independent and a licensed professional;

(i) modify or alter Section 8.7 of the Indenture or the obligation of the Trustee under the Indenture to hold the Trust Estate for the equal and proportionate benefit and security of the Holders, without any priority of any Obligation over any other Obligation;

(j) certify pursuant to Section 4.3D(1) or 4.3D(2) of the Indenture any retired Obligation or any principal payment on an Obligation as the basis for taking any action under the Indenture, if such retirement or payment is pursuant to a regularly scheduled sinking fund or principal installment or made at the Stated Maturity of such Obligation; provided, however, that the Borrower shall not have to comply with the requirements of Section 9.1 before certifying pursuant to Section 4.3D(1) or 4.3D(2) of the Indenture in connection with the issuance of Additional Obligations under the Indenture if such Additional Obligations are:

(i) issued to refund Obligations the interest on which is exempt from taxation under Section 103 of the Internal Revenue Code, or obligations which were issued to refund such tax-exempt Obligations;

(ii) issued to refund Obligations owed to, or guaranteed by, the United States of America acting through the RUS, or obligations which were issued to refund such Obligations owed to, or guaranteed by, the United States of America acting through the RUS; or

(iii) Obligations issued to refund Obligations, if the combined term of the refunded Obligations and the refunding Additional Obligations does not exceed the term



for which the refunded Obligations could have been originally issued under the provisions of this paragraph (j) or paragraph (k) of this Section 6.9.

(k) issue any Additional Obligations under the Indenture to finance Property Additions unless the following additional requirements are satisfied in addition to the requirements set forth in the Indenture for issuing such Additional Obligations:

(i) If the proceeds of such Additional Obligations are being used to finance the initial cost of the construction or acquisition of identified tangible assets, the weighted average life of the loan evidenced by such Additional Obligations does not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(ii) The principal of the loan evidenced by such Additional Obligations is amortized at a rate that shall yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest; and

(iii) The principal of the loan being evidenced by such Additional Obligations has a maturity of not less than five years.

In determining its compliance with the requirements of clause (ii) of this paragraph (k), the Borrower shall be permitted to make reasonable assumptions as to the interest rate which such Additional Obligations will bear as the Borrower deems appropriate in light of the prevailing interest rate environment in which such Additional Obligations are to be issued;

(l) permit any liens in respect of judgments or awards which would be Permitted Exceptions pursuant to Paragraph F of the definition of "Permitted Exceptions" in the Indenture, by virtue of the fact that such liens are fully covered by insurance;

(m) enter into any leases to and permits for occupancy, which materially impair the Company's use of the property in the conduct of its business, by, other Persons which would be Permitted Exceptions pursuant to Paragraph K of the definition of "Permitted Exceptions" by virtue of the fact that any such leases and/or permits are for a period of less than ten (10) years;

(n) treat any Bondable Property, which Bondable Property would otherwise be considered as Retired pursuant to the definition thereof in the Indenture, as not being considered Retired pursuant to the proviso relating to rate recovery in the definition of Retired in the Indenture; or

(o) enter into a Supplemental Indenture pursuant to 12.1 L of the Indenture providing for the amendment or change of the Indenture or supplements thereto based on the reasonable judgment of the Trustee that such change will not materially and adversely affect the rights of the Holders.

#### **Section 6.11. Negative Pledge**

The Borrower shall not, without first complying with the requirements of Section 9.1, directly or indirectly create, incur, assume or permit to exist any lien, mortgage, pledge, security

interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other agreement to give any security interest) on or with respect to any of the Excepted Property except for:

(a) Permitted Exceptions (other than the Permitted Exception described in paragraph Y of the definition of Permitted Exceptions);

(b) as to the Excepted Property described in paragraphs B through E of the Indenture, inclusive, and paragraph K of the definition of Excepted Property, liens, mortgages, pledges, security interests, charges and encumbrances in connection with purchase money, construction or acquisition indebtedness (or renewals or extensions thereof) that encumber only the asset or assets so purchased, constructed or acquired or property improved through such purchase, construction or acquisition, and the proceeds upon a sale, transfer or exchange thereof;

(c) liens, mortgages, pledges, security interests, charges and encumbrances (i) for the benefit of all Holders of the Obligations issued under the Indenture, (ii) in connection with any bond service or similar fund established by the Borrower with respect to any debt securities, the interest on which is excludable from gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, to the extent of amounts deposited in such funds in the ordinary course to make regularly scheduled payments on such debt securities, or (iii) in connection with any debt service or similar fund established by the Borrower for the payment of principal or interest on debt securities, the interest on which is excludable from gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such fund is funded solely from the proceeds of the issuance of such debt securities (or funded in connection with the refinancing of other debt by such debt securities);

(d) liens, pledges, security interests, charges and encumbrances with respect to deposit, brokerage, commodity and other similar accounts to the extent such liens, pledges, security interests, charges and encumbrances do not secure indebtedness for borrowed money other than indebtedness incurred in connection with acquiring securities or other investments deposited in any such account; or

(e) liens, pledges, security interests, charges and encumbrances with respect to any interest, debt or equity, of the Borrower in National Rural Utilities Cooperative Finance Corporation or CoBank, ACB, purchased or otherwise acquired by the Borrower in connection with membership in such entity or any borrowing from such an entity.

#### **Section 6.12. Emissions Allowances**

Except for sales initiated by the Government without the prior consent and knowledge of the Borrower, the Borrower shall not, without first complying with the requirements of Section 9.1, sell, assign or otherwise dispose of (or enter into any agreement therefor) any allowances for emissions or similar rights granted by any governmental authority except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance

with the preceding sentence of this Section 6.12, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." The proceeds of any such sale, assignment or other disposition, shall be deposited in the Construction Fund Trustee Account. For such sales initiated by the Government without the prior consent and knowledge of the Borrower, the Borrower shall give RUS, promptly upon receipt thereof, written notice of such sales.

#### **Section 6.13. Renewable Energy Credits**

The Borrower shall not, without first complying with the requirements of Section 9.1, sell, assign or otherwise dispose of (or enter into any agreement therefor) (a) any credits received from allowances for emissions or (b) similar rights granted by any governmental authority, in either case which relate to renewable energy, except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 6.13, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." The proceeds of any such sale, assignment or other disposition, shall be deposited in the Construction Fund Trustee Account.

#### **Section 6.14. Fiscal Year**

The Borrower shall not, without first complying with the requirements of Section 9.1, change its fiscal year.

#### **Section 6.15. Limits on Variable Rate Indebtedness**

During any period in which (a) an Event of Default has occurred and is continuing or (b) the Borrower has not maintained a Credit Rating of Investment Grade, the Borrower shall not, if so directed in writing by RUS, without first complying with the requirements of Section 9.1, increase the outstanding principal amount of indebtedness of the Borrower, the interest rate with respect to which is adjusted or readjusted at intervals of less than two (2) years, to an amount exceeding the amount thereof outstanding on the date of such notice from the RUS.

#### **Section 6.16. Limits on Short-Term Indebtedness**

The Borrower shall not, without first complying with the requirements of Section 9.1, on any date permit Short-Term Indebtedness to exceed fifteen percent (15%) of the Borrower's long-term debt and equities (determined in accordance with Accounting Requirements, except that such determination and calculations shall not be made on a consolidated basis and shall not, therefore, take into account the Short-Term Indebtedness, long-term debt and equities of the Borrower's Affiliates and Subsidiaries) as of the end of the fiscal quarter immediately preceding such date. As used in this Section 6.16, "Short-Term Indebtedness" means all indebtedness of, or guaranteed or in effect guaranteed (whether directly or indirectly, contingent or otherwise) against loss in respect thereof to the holder thereof by, the Borrower (other than trade payables) which on the date of original issuance thereof is classified as short-term debt under Accounting



Requirements; provided, however, that any indebtedness issued in accordance with a credit agreement or other arrangement with a maturity or expiration date of greater than one year from the date of effectiveness of such credit agreement or arrangement shall not be considered Short-Term Indebtedness at such time as the maturity or expiration of such credit agreements or arrangements is less than one year.

#### **Section 6.17. Limitations on Changing Principal Place of Business**

Without prior written notification to the RUS, the Borrower shall not change its principal place of business.

#### **Section 6.18. Limitations on RUS Financed Extensions and Additions**

The Borrower shall not extend or add to its System either by construction or acquisition without the prior written approval of RUS if the construction or acquisition is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee.

#### **Section 6.19. Historic Preservation**

Notwithstanding the provisions of Section 3.2, the Borrower shall not, without approval in writing by the RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

#### **Section 6.20. Change of Ratings Agency**

At any time that only one Rating Agency has assigned a Credit Rating, the Borrower shall not, without first complying with the requirements of Section 9.1, change the Rating Agency then providing the Credit Rating.

#### **Section 6.21. Competitive Transition Charges**

The Borrower shall not, without first complying with the requirements of Section 9.1, (i) sell, exchange or otherwise dispose of Competitive Transition Charges, (ii) request the release of Competitive Transition Charges from the lien of the Indenture, or (iii) utilize Competitive Transition Charges as a basis for issuing Obligations under the Indenture, or as basis for a securitized financing outside the Indenture, or withdraw Trust Moneys related to Competitive Transition Charges.

#### **Section 6.22. Limitation on Release of Agreements**

The Borrower shall not, without first complying with the requirements of Section 9.1, sell, assign or otherwise dispose of, request the release of or release any contract described in Section 6.7 or any Wholesale Power Contract from the lien of the Indenture.

#### **Section 6.23. Construction Fund Trustee Account**

The Borrower shall deposit the proceeds of loans made or guaranteed by RUS promptly after the receipt thereof in a bank or banks that are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS. Any account (hereinafter called "Construction Fund Trustee Account") in which any such moneys shall be deposited shall be insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be designated by the corporate name of the Borrower followed by the words "Construction Fund Trustee Account." Moneys in any Construction Fund Trustee Account shall be used solely for the construction and operation of the System and may be withdrawn only upon checks, drafts, or orders signed on behalf of the Borrower and countersigned by an executive officer thereof.

#### **Section 6.24. Impairment of Contracts**

The Borrower shall not (a) materially breach any obligation to be paid or performed by the Borrower under, or (b) take any action which is likely to materially impair the value of, any contract which is subject to the security interest created by the Indenture.

#### **Section 6.25. Limitations on Distributions**

Without the prior written approval of RUS, the Borrower shall not in any calendar year make any Distributions to its members or stockholders except as follows:

- (a) *Equity above 30%.* If, after giving effect to any such Distribution, the Equity of the Borrower shall be greater than or equal to 30% of its Total Assets; or
- (b) *Equity above 25%.* If, after giving effect to any such Distribution, the aggregate of all Distributions made during the calendar year when added to such Distribution shall be less than or equal to 25% of the margins for the year to which the Distribution relates.

Provided however, that in no event shall the Borrower make any Distributions if there is unpaid when due any installment of principal of (premium, if any) or interest on its Notes, if an Event of Default has otherwise occurred and is continuing, or, if, after giving effect to any such Distribution, the Borrower's current and accrued assets would be less than its current and accrued liabilities and provided, further, that the limitation on Distributions created by this Section 6.25 shall not apply to any payments, rebates, refunds or abatement of power costs made in accordance with any tariff on file with the Kentucky Public Service Commission.

#### **Section 6.26. Limitations on Additional Indebtedness**

The Borrower shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Indebtedness) other than the following ("Permitted Debt"):

- (a) Additional Obligations issued in compliance with Article IV of the Indenture;
- (b) Purchase money indebtedness in non-System property, in an amount not exceeding 10% of Net Utility Plant;

(c) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(d) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(e) Unsecured indebtedness for borrowed money, up to an aggregate amount of 15% of Net Utility Plant, so long as after giving effect to such unsecured indebtedness, the Borrower's Equity is more than 20% of its Total Assets;

(f) Debt represented by dividends declared but not paid; and

(g) Subordinated Indebtedness approved by RUS.

The Borrower may incur Permitted Debt without the consent of RUS only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder. By executing this Agreement any consent of RUS that the Borrower would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate federal laws or RUS Regulations.

#### **Section 6.27. Additional Negative Covenants.**

The Borrower shall also comply with the additional negative covenants identified in Schedule 6 hereto.

### **ARTICLE VII**

#### **EVENTS OF DEFAULT**

##### **Section 7.1. Events of Default.**

The following shall be "Events of Default" under this Agreement:

(a) *Representations and Warranties.* Any representation or warranty made by the Borrower in Article II hereof or, in any certificate furnished to the RUS hereunder or in the Loan Documents or in any filing pursuant to RUS Regulations shall be incorrect in any material respect at the time made and shall at the time in question be untrue or incorrect in any material respect and remain uncured;

(b) *Payment.* Default shall be made in the payment of or on account of interest on or principal of any RUS Note when and as the same shall be due and payable, whether by acceleration or otherwise, which shall remain unsatisfied for five (5) Business Days;

(c) *Other Covenants.* Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain

unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Borrower by the RUS;

(d) *Corporate Existence.* The Borrower shall forfeit or otherwise be deprived of its corporate charter or any franchise, permit, easement, consent or license required to carry on any material portion of its business;

(e) *Other Obligations.* Default by the Borrower in the payment of any obligation, whether direct or contingent, for borrowed money in excess of \$1 million or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;

(f) *Bankruptcy.* A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and

(g) *Dissolution or Liquidation.* Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days. The term "dissolution or liquidation of the Borrower," as used in this paragraph (g), shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions permitting such actions.

(h) *Indenture.* Any Event of Default as set forth in Section 8.1 of the Indenture and any event (as set forth in such Section 8.1) that with the giving of notice or the passage of time, or both, could become an Event of Default.

## **ARTICLE VIII**

### **REMEDIES**

#### **Section 8.1. Remedies**

Upon the occurrence of an Event of Default, then RUS may pursue all rights and remedies available to RUS that are contemplated by this Agreement in the manner, upon the

conditions, and with the effect provided in this Agreement, including, but not limited to, a suit for specific performance, injunctive relief or compensatory damages. The RUS is hereby authorized, to the maximum extent permitted by applicable law, to demand specific performance of this Agreement at any time when the Borrower shall have failed to comply with any provision of this Agreement applicable to it. The Borrower hereby irrevocably waives, to the maximum extent permitted by applicable law, any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance. Nothing herein shall limit the right of the RUS to pursue all rights and remedies available to a creditor at law or in equity following the occurrence of an Event of Default listed in Article VII hereof, or any right or remedy available to the RUS as a Holder of an Obligation under the Indenture. Each right, power and remedy of the RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

#### **Section 8.2. Suspension of Advances**

In addition to the rights, powers and remedies referred to in Section 8.1, the RUS may, in its absolute discretion, suspend or terminate the obligation to make or approve Advances hereunder if (i) any Event of Default, or any occurrence which with the passage of time or giving of notice would be an Event of Default, occurs and is continuing; or (ii) an event shall have occurred that has had or is likely to have a Material Adverse Effect.

### **ARTICLE IX**

#### **MISCELLANEOUS**

#### **Section 9.1. Notice to RUS; Objection of RUS**

Before undertaking any transaction described in Article V or Article VI or the schedules attached hereto that requires compliance with the requirements of Section 9.1, the Borrower shall give to the RUS (i) notice in writing describing in reasonable detail the proposed transaction and clearly stating that the transaction is covered by this Section 9.1 and (ii) drafts of any documents to effect such transaction. If the RUS delivers to the Borrower written notice that it objects to the proposed transaction within (i) sixty (60) days (or such shorter period as the parties shall agree to in writing) in the case of any transaction of the nature described in paragraph (a) below, or (ii) 30 days (or such shorter period as the parties shall agree to in writing) in the case of any transaction of the nature described in paragraph (b) below, the Borrower shall not complete the transaction without RUS approval.

(a) Transactions requiring compliance with the requirements of this Section 9.1 pursuant to Sections 6.2, 6.3, 6.7, 6.10(a), 6.10(c), 6.10(e), 6.10(f), 6.10(n), 6.10(o), 6.11 and 6.14 shall be subject to a 60-day review and objection period (or such shorter period as the parties shall agree to in writing); and

(b) Transactions requiring compliance with the requirements of this Section 9.1 pursuant to Sections 5.13, 6.8, 6.9, 6.10(b), 6.10(d), 6.10(g), 6.10(h), 6.10(i), 6.10(j), 6.10(k),



6.10(l), 6.10(m), 6.12, 6.13, 6.15, 6.16, 6.20, 6.21 and 6.22 shall be subject to a 30-day review and objection period (or such shorter period as the parties shall agree to in writing).

## **Section 9.2. Notices**

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

The Government:

Rural Utilities Service  
United States Department of Agriculture  
Room No. 5135-S  
1400 Independence Avenue, S.W.  
Stop 1510  
Washington, DC 20250  
Fax: (202) 720-9542  
Attention: RUS Administrator

With a copy to:

Rural Utilities Service  
United States Department of Agriculture  
Room No. 0270-S  
1400 Independence Avenue, S.W.  
Stop: 1568  
Washington, DC 20250  
Fax: (202) 720-1401  
Attention: Power Supply Division

The Borrower:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Fax: (270) 827-2558  
Attention: President and Chief Executive Officer

With a copy to:

Sullivan, Mountjoy, Stainback & Miller  
100 St. Ann Building  
PO Box 727  
Owensboro KY 42302-0727  
Fax: (270) 683-6694  
Attention: James Miller

### **Section 9.3. Expenses**

To the extent permitted by Law, the Borrower shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if the RUS has reasonable grounds to believe that such enforcement may be necessary.

### **Section 9.4. Late Payments**

If payment of any amount due hereunder is not received at the United States Treasury in Washington, D.C., or such other location as RUS may designate to the Borrower, within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount," and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period), the Borrower shall pay to RUS, in addition to all other amounts due under the terms of the RUS Notes and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

### **Section 9.5. Filing Fees**

To the extent permitted by Law, the Borrower agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. The Borrower agrees to save harmless and indemnify the RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by the RUS in connection with this Agreement. The provisions of this Section 9.5 shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the RUS Notes.

### **Section 9.6. No Waiver**

No failure on the part of the RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

#### **Section 9.7. Governing Law**

EXCEPT TO THE EXTENT GOVERNED BY APPLICABLE FEDERAL LAW, THE LOAN DOCUMENTS SHALL BE DEEMED TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF KENTUCKY.

#### **Section 9.8. Holiday Payments**

If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

#### **Section 9.9. Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the Borrower and the RUS and their respective successors and assigns, provided, however, that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the RUS.

#### **Section 9.10. Complete Agreement; Amendments**

This Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

#### **Section 9.11. Headings**

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

#### **Section 9.12. Severability**

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement and the RUS Notes shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained herein.

#### **Section 9.13. Right of Set Off**

Upon the occurrence and during the continuance of any Event of Default, the RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to



exercise rights of set off or recoupment and apply any and all amounts held or hereafter held, by the RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the RUS Notes. The RUS agrees to notify the Borrower promptly after any such set off or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such set off, recoupment or application. The rights of the RUS under this Section 9.13 are in addition to any other rights and remedies (including other rights of set off or recoupment) which the RUS may have. The Borrower waives all rights of set off, deduction, recoupment or counterclaim.

#### **Section 9.14. Schedules and Exhibits**

Each Schedule and Exhibit attached hereto and referred to herein is each an integral part of this Agreement.

#### **Section 9.15. Sole Benefit**

The rights and benefits set forth in this Agreement are for the sole benefit of the parties thereto and may be relied upon only by them.

#### **Section 9.16. Prior Loan Contracts**

It is understood and agreed that with respect to all loan agreements previously entered into by and between RUS and the Borrower, including, without limitation, the Existing Loan Contract, (hereinafter being referred to as "Prior Loan Contracts") the Borrower shall be required, as of the date hereof, to meet affirmative and negative covenants as set forth in this Agreement rather than those set forth in any Prior Loan Contract. As of the date hereof, this Agreement replaces and supersedes any Prior Loan Contract. In the event of any conflict between any provision set forth in the Prior Loan Contract and any provision in this Agreement, the requirements as set forth in this Agreement shall apply.

#### **Section 9.17. Authority of RUS Representatives**

In the case of any consent, approval or waiver from the RUS that is required under this Agreement or any other Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this Section 9.17, "authorized RUS representative" means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

#### **Section 9.18. Relation to RUS Regulations**

(a) In case of any conflict between the terms of this Agreement and the provisions of the RUS Regulations, the terms of this Agreement shall control.

(b) The RUS Regulations shall apply to the Borrower to the extent and under the conditions expressly set forth in this Agreement (other than in Section 5.13). To the extent this

the terms of this Agreement, the Indenture, and the RUS Regulations are silent on an issue relating to System operation, control, maintenance, and accounting, the Borrower will comply with Prudent Utility Practice.

(c) The Borrower recognizes that some RUS Regulations implement Federal statutes or regulatory policies that are not limited to rural electrification but apply to many types of Federal assistance. Nothing herein is intended to, or shall be deemed to, waive the requirements of any Federal statute or regulation that is applicable to the Borrower independently of any requirement made applicable solely by the RUS Regulations.

(d) Subject to paragraphs (b) and (c) above, if on the date of this Agreement, any RUS Regulation conflicts with the terms of this Agreement or the Indenture pursuant to 7 C.F.R. 1710.113(c)(2) (62 F.R. 7721 & 18037 (1997)), the RUS hereby waives compliance by the Borrower with such RUS Regulations.

#### **Section 9.19. Term**

This Agreement shall remain in effect until one of the following two events has occurred:

(a) The Borrower and the RUS replace this Agreement with another written agreement; or

(b) All of the Borrower's obligations under this Agreement and the RUS Notes have been discharged and paid.

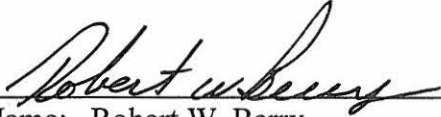
#### **Section 9.20. Relation to Indenture**

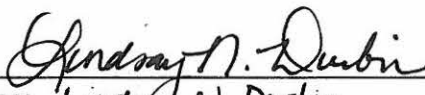
The RUS is a party to this Agreement and a Holder of Outstanding Secured Obligations under the Indenture. Both this Agreement and the Indenture govern the relationship between the Borrower and the RUS, and the parties intend that the Indenture and this Agreement independently govern such relationship. Each provision of this Agreement is intended to and shall be fully operative and enforceable as written whether or not the subject matter of any such provision is or is not addressed by the Indenture, or, if so addressed, is addressed in a different way from that set forth in this Agreement.

*(Signatures begin on next page.)*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, and the Borrower's execution to be attested under seal, as of the day and year first above written.


**BIG RIVERS ELECTRIC CORPORATION**

By:   
Name: Robert W. Berry  
Title: President and Chief Executive Officer

Attest:   
Name: Lindsay N. Durbin  
Title: CFO

[CORPORATE SEAL]

**THE UNITED STATES OF AMERICA**

By:   
Name: CHRISTOPHER A McLean  
Title: CHRISTOPHER A. McLEAN  
Acting Administrator

## **SCHEDULE 1**

### **Outstanding Notes**

RUS Series A Note – RUS 2009 Promissory Note, Series A, dated July 16, 2009 in the stated principal amount of \$602,573,536.

RUS Series B Note – RUS 2009 Promissory Note, Series B, dated July 16, 2009 in the stated principal amount of \$245,530,257.30.

## **SCHEDULE 2**

**To the First Amended and Restated Consolidated Loan Contract  
dated as of January 2, 2018  
between Big Rivers Electric Corporation and United States of America**

### **Wholesale Power Contracts**

1. Wholesale Power Contract made as of October 14, 1977, between the Borrower and Jackson Purchase Rural Electric Cooperative Corporation, as amended.
2. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Meade County Rural Electric Cooperative Corporation, as amended.
3. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Kenergy Corp. (successor by consolidation to Henderson Union Rural Electric Cooperative Corporation), as amended.
4. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation), as amended.
5. Agreement dated October 12, 1974 by and between the Borrower and Kenergy Corp. (successor by consolidation to Henderson-Union Electric Corporation), as amended.
6. Agreement dated October 12, 1974 by and between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation) as amended and restated by an Agreement dated February 16, 1988, as amended.
7. Agreement dated as of July 15, 1998 between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation and Henderson-Union Electric Cooperative Corp.). as amended.

### **SCHEDULE 3**

**To the First Amended and Restated Consolidated Loan Contract  
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#### **Litigation**

*Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, Henderson Circuit Court Civil Action No. 09-CI-00693 (the “Henderson Circuit Court Action”); *City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light v. Big Rivers Electric Corporation*, Kentucky Court of Appeals No. 2010-CA-000120-MR; *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, Kentucky Supreme Court No. 2014-SC-000595; *Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light*, American Arbitration Association Case No. 52 198 000173 10.

Big Rivers filed suit in Henderson, Kentucky, Circuit Court on July 31, 2009, requesting an order referring to arbitration a dispute with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “HMP&L”) regarding the rights of the parties respecting “Excess Henderson Energy as defined in the contracts by which Big Rivers operates HMP&L’s Station Two and receives a portion of the generation output of Station Two. By agreement dated as of July 16, 2009, Western Kentucky Energy Corp. (“WKEC”) indemnified Big Rivers against certain adverse consequences of failing to prevail in the arbitration with HMP&L. The obligations of WKEC are guaranteed by its parent company, E.ON U.S. LLC, and its successor in interest. The order of the Henderson Circuit Court directing arbitration was appealed to the Kentucky Court of Appeals, which found that the circuit court order was non-final and non-appealable, and dismissed the appeal for want of appellate jurisdiction. The contractual dispute was submitted to the American Arbitration Association.

The arbitration panel issued an award on May 31, 2012, essentially adopting the HMP&L position in the arbitration. Big Rivers filed a motion on July 16, 2012, in the Henderson Circuit Court asking the court to vacate the arbitrators’ award. The judge ruled against Big Rivers on December 5, 2012. Big Rivers filed a notice of appeal to the Kentucky Court of Appeals on January 2, 2013. The Court of Appeals upheld the lower court. On August 12, 2015, the Kentucky Supreme Court denied Big Rivers’ request for discretionary review of the case.

Counsel for HMP&L wrote counsel for Big Rivers on June 26, 2012, asserting that Big Rivers owes HMP&L for “fixed costs” associated with energy Big Rivers had taken from HMP&L’s “reserve capacity for the period beginning in August 2009 to the date of the award May 30, 2012.” The amount claimed by HMP&L in that letter is \$3,753,013.09.

By letter dated September 14, 2015, from counsel for HMP&L to the lead counsel from the two law firms representing Big Rivers in this matter, HMP&L demanded damages of \$23,801,477.50, and an immediate cession of ongoing sales of Excess Henderson Energy by Big Rivers.

On February 12, 2016, HMP&L filed a petition in the Henderson Circuit Court case initiated by Big Rivers in 2009 that resulted in the arbitration award. The petition seeks damages in an unspecified amount for Big Rivers' alleged wrongful use of this Excess Henderson Energy from July 2009 until Big Rivers stops using the Excess Henderson Energy. Big Rivers has notified WKEC of this petition as required under the July 16, 2009 Indemnification Agreement between the parties. The attorneys retained by WKEC to represent Big Rivers in the original arbitration filed a motion to dismiss the petition on technical grounds. The Henderson Circuit Court ruled that the damages claim can proceed in the current docket. Discovery has commenced in the case. In a discovery response dated September 29, 2016, HMP&L said it is seeking damages from Big Rivers of approximately \$32,216,403 for the period from August 1, 2009 through July 31, 2016. Big Rivers is vigorously contesting the claims asserted in the petition based on substantial procedural and substantive defects in the petition and the claims it purports to assert including, without limitation, the liability of Big Rivers, and the measure and calculation of damages.

*In the Matter of Application of Big Rivers Electric Corporation for a Declaratory Order, Kentucky Public Service Commission, Case No. 2016-00278.*

Big Rivers filed an Application with the Kentucky Public Service Commission ("Commission") on July 29, 2016, seeking a declaratory order that, under the Power Sales Contract between Big Rivers and the City of Henderson and the Utility Commission of the City of Henderson (the City of Henderson and the Utility Commission of the City of Henderson, collectively, "Henderson") regarding operation of Henderson's Station Two, Big Rivers is not responsible for the variable costs of any energy defined as Excess Henderson Energy produced by Station Two that Big Rivers does not take, and that Henderson is responsible for those costs, or in the alternative, if Big Rivers is responsible for these costs under the Power Sales Contract, that the PSC modify that contract to make Henderson responsible for those costs. Big Rivers has been charging those costs to Henderson since June 1, 2016, but Henderson has refused payment. If the Commission rules against Big Rivers, the costs charged to Henderson may have to be expensed by Big Rivers, and the future costs of generating the unwanted Excess Henderson Energy could be the responsibility of Big Rivers.

A hearing in this case was held February 7, 2017. The briefing schedule ends March 21, 2017, after which the case will be submitted to the Commission for decision. The Commission will determine whether it has jurisdiction over the pending dispute, and if so, how the contracts involved should be applied. But the Commission will not award damages.



#### **SCHEDULE 4**

**To the First Amended and Restated Consolidated Loan Contract  
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The Last Day for an Advance referred to in Section 3.08 of the Agreement is as follows:

Funds will only be advanced pursuant to this Agreement and subject to the Anti-Deficiency Act. The fund advance period for the RUS commitment begins on the date of each of the W8 FFB Note and X8 FFB Note and terminates on the earlier of five (5) years from the date thereof or the last day for an advance as identified below.

No funds will be advanced subsequent to the Last Day for an Advance unless prior to the termination of the advance period the Administrator has extended the Last Day for an Advance by written agreement.

Under no circumstances will RUS ever be obligated to make or permit advances of funds contrary to 31 U.S. C. §1551.

Last Day for an Advance under W8 FFB Note: September 30, 2021

Fiscal Year of Obligation: 2016

Last Day for an Advance under X8 FFB Note: September 30, 2021

Fiscal Year of Obligation: 2016



## **SCHEDULE 5**

### **Additional Affirmative Covenants**

[None]

**SCHEDULE 6**

**Additional Negative Covenants**

[None]

## **EXHIBIT A**

### **To the First Amended and Restated Consolidated Loan Contract dated as of January 2, 2018 between Big Rivers Electric Corporation and United States of America**

#### **Equal Opportunity Contract Provisions**

During the performance of this contract, the Borrower agrees as follows:

(a) The Borrower shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Borrower shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Borrower shall, in all solicitations or advertisements for employees placed by or on behalf of the Borrower, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Borrower shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Borrower's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Borrower shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Borrower shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Borrower's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Borrower shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 12246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Borrower shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **EXHIBIT B**

**To the First Amended and Restated Consolidated Loan Contract  
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### **Description of Rating Agency Services**

- (a) Ongoing surveillance of Big Rivers Electric Corporation's ("BR's") rating, including an annual meeting with senior ratings agency analysts, and a full credit report published annually;
- (b) Annual presentation by senior ratings agency analysts on BR's credit rating to BR's Board of Directors, if so requested;
- (c) Annual presentation by senior ratings agency analysts on BR's credit rating to the RUS, if so requested by the RUS; and
- (d) Furnish to the RUS copies of any written reports given to BR.