



JEANIE SELL LATZ  
SENIOR VICE PRESIDENT  
CORPORATE SERVICES

November 2, 2000

**SENT VIA FEDERAL EXPRESS**

**FILED**

NOV 3 2000

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
200 Madison Street, Suite 100  
Jefferson City, MO 65101

Missouri Public  
Service Commission

EF-2001-282

Re: Amended Application and Motion for Expedited  
Treatment of Kansas City Power & Light  
Company, a Missouri corporation, for authority  
to issue debt securities

Dear Mr. Roberts:

Enclosed for filing with the Commission are the original and fourteen (14) copies of Kansas City Power & Light Company's Amended Application and Motion for Expedited Treatment in the above-referenced financing. Please bring this matter before the Commission. The Company would appreciate receiving the Commission's Order in this matter on or before Friday, December 1, 2000.

If you have any questions concerning this filing, please call me at (816) 556-2936 or Andrea Bielsker at (816) 556-2595.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanie Sell Latz", written over a horizontal line.

Enc.

c w/enc.: Eric Anderson (MPSC)  
Office of the Public Counsel (Attn: Martha Hogerty)  
Bernie Beaudoin  
Andrea Bielsker  
Neil Roadman  
Bill Riggins

K A N S A S C I T Y P O W E R & L I G H T C O M P A N Y

1201 WALNUT P.O. BOX 418679 KANSAS CITY, MO 64141-9679 • 816-556-2200 • WWW.KCPL.COM

FILED

NOV 3 2000

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the matter of the Application )  
of KANSAS CITY POWER & LIGHT COMPANY, )  
a Missouri corporation, for authority )  
to issue debt securities. )

Case No. EF-2001-282

**AMENDED APPLICATION AND**  
**MOTION FOR EXPEDITED TREATMENT**

Comes now KANSAS CITY POWER & LIGHT COMPANY (Applicant or Company), pursuant to Sections 393.180 and 393.200, RSMo. 1989, and states as follows:

1. Applicant is a corporation duly organized and existing under the laws of the State of Missouri. Its principal office and place of business is located at 1201 Walnut, Kansas City, Missouri 64106; e-mail: www.kcpl.com; telephone: (816) 556-2936; fax: (816) 556-2418. It is engaged in the generation, transmission, distribution and sale of electric energy. Electric energy is distributed and sold to the public in Applicant's certified areas in the States of Missouri and Kansas. The major portion of Applicant's revenues is derived from operations in the City of Kansas City, Missouri, and certain adjacent areas. Applicant is, therefore, a "public utility" subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo. 1989. Applicant's Certificate of Good Standing is attached hereto and incorporated herein as Appendix No. 1.

2. Communications in regard to this matter should be addressed to:

Ms. Jeanie Sell Latz  
Senior Vice President-Corporate Services  
and Corporate Secretary  
Kansas City Power & Light Company  
1201 Walnut  
P. O. Box 418679  
Kansas City, Missouri 64106  
Telephone: (816) 556-2936  
Fax: (816) 556-2418  
E-mail: jeanie.latz@kcpl.com

3. The status of Applicant's Capital Stock outstanding at September 30, 2000, under its Articles of Consolidation, as amended, was as follows:

<u>Class of Stock</u>	<u>Number of Par Value Shares Authorized</u>	<u>Par Value</u>	<u>Number of Shares Without Par Value Authorized</u>	<u>Number of Shares Outstanding</u>
Cumulative Preferred Stock	396,357	\$100	None	390,623*
Cumulative No Par Preferred Stock	--	--	1,572,000	--
Cumulative Preference Stock	--	--	11,000,000	--
Common Stock	-- <u>396,357</u>	--	<u>150,000,000</u> <u>162,572,000</u>	<u>61,846,020</u> <u>62,236,643</u>

\*In compliance with the Purchase Fund provisions of the resolution of Applicant's Board of Directors establishing the Applicant's 4% Cumulative Preferred Stock, Applicant purchases and cancels 1,600 shares of its 4% Cumulative Preferred Stock annually.

At September 30, 2000, Applicant's indebtedness was \$1,001,768,000, represented by (i) \$196,500,000 of Pollution Control Bonds, Series 1998A, 1998B, 1998C, and 1998D;

(ii) \$200,000,000 of unsecured medium-term notes;  
(iii) \$296,500,000 of medium-term notes secured with General Mortgage Bonds; (iv) \$158,768,000 of General Mortgage Bonds pledged in support of Pollution Control Bonds; and  
(v) \$150,000,000 of Subordinated Debentures issued as part of the Trust Originated Preferred Securities (TOPrS).

4. Applicant had \$225,125,000 of short-term indebtedness outstanding on September 30, 2000.

5. None of the outstanding stock or stock certificates or bonds, notes or other evidences of indebtedness of Applicant have been issued or used in capitalizing its rights to be a corporation, or any franchise or permit, or the right to own, operate or enjoy any such franchise or permit, or any contract for consolidation or lease.

6. Applicant has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates which has occurred within three (3) years of the date of this Application, except as identified in Appendix No. 2 attached hereto and incorporated herein.

7. No annual report or assessment fees are overdue.

8. Applicant proposes to file with the Securities and Exchange Commission a universal debt registration statement that has become standard in the market and in the electric utility industry for the issuance of up to \$400 million principal amount.

9. A universal registration statement allows debt securities to be issued with the most advantageous terms and

conditions at the time of issuance. This flexibility and ability to take advantage of rapidly changing market conditions will help enable the Applicant to maintain its low cost debt structure.

10. Applicant will issue the debt securities with fixed or variable interest rates not to exceed ten percent (10%) on (i) fixed rate debt securities or (ii) the initial rate on any variable or remarketed debt securities.

11. The debt securities will have maturities of nine months to 30 years and will be issued by the Applicant or through agents or underwriters for the Applicant in multiple offerings of differing amounts with different interest rates (including variable interest rates) and other negotiated terms and conditions.

12. The debt securities will be issued as unsecured debt for flexibility. This additional flexibility is provided at a very low cost with the current spread between the Applicant's senior debt and unsecured debt at about 25 basis points.

13. Applicant is also requesting the authority to enter into interest rate hedging instruments in conjunction with these debt securities. Depending on investor appetite at the time of issuance, it is sometimes more economical to issue floating rate securities and swap them to a fixed rate or cap them at some interest rate, rather than issue fixed rate securities. Alternatively, it may be more economical to issue fixed rate securities and swap them to floating rather than issue floating rate securities. By having the flexibility to access the debt markets and utilize the derivatives market together, Applicant

will be able to minimize the cost of the debt. While Applicant has authority from the Commission provided in Case No. EF-2000-8 to enter into interest rate hedging instruments, the purpose of that authority is to manage the portfolio of variable rate debt, particularly pollution control bonds that the Applicant currently has outstanding. The authority requested in this application would be limited to using interest rate swaps or caps solely in conjunction with the debt securities approved herein.

14. The proceeds of the debt securities will be used by Applicant for general corporate purposes, which may include capital expenditures, acquisitions, refinancing or repurchase of outstanding long-term debt, preferred and common securities, investments in subsidiaries, and repayment of short-term debt and other business opportunities.

15. Applicant is entitled, with the authorization of the Commission, to issue up to \$400 million debt securities and related interest rate swaps or caps and to enter into the agreements necessary for the transaction. Applicant further submits that such issuance and execution are in the public interest.

16. Applicant believes that this verified Application and exhibits will provide the Commission with sufficient facts and information to make a proper disposition of this Application without a hearing.

17. Applicant hereby seeks authority to issue, during the effective period of the registration, up to \$400 million of unsecured debt securities with fixed or variable interest rates

not to exceed 10% on (i) fixed-rate debt securities or (ii) the initial rate on any variable rate or remarketed debt securities. Applicant will file with the Commission within ten (10) days of the issuance of any debt securities a report including the amount of debt securities issued, date of issuance, interest rate (initial rate if variable), maturity date, and redemption schedules or special terms, if any. Applicant will also file a statement of the portion of the issuance of the debt securities, if any, which is subject to the fee schedule in Section 386.300, RSMo 1986, as amended.

18. Applicant seeks an order in this matter by December 1, 2000. Applicant recently received advice from prospective underwriters that market conditions for debt securities are expected to be most favorable in early December 2000, and that interest rates are likely to become less favorable later in this year and early next year. Based on that information, Applicant is filing this Amended Application and Motion for Expedited Treatment. This registration for the debt securities is of the same standard type and form as those filed by the Applicant, and approved by the Commission, over the past twelve years (beginning with the Commission's order in Case No. EF-88-216 entered April 1, 1988). It is in the best interest of the customers and public that Applicant issue these securities as early in December 2000 as market conditions allow.

19. The following exhibits are herewith filed or will be filed and made a part hereof:

Exhibit 1 - Form of Registration Statement  
registering the debt securities.

Exhibit 2 - Form of Indenture for debt securities  
between Applicant and Trustee.

Exhibit 3 - Form of resolutions of the Applicant's  
Board of Directors authorizing, among other things, the  
issuance of the debt securities. *(A certified copy of  
this exhibit will be filed as a late-filed exhibit on  
November 8, 2000 following Applicant's Board of  
Directors meeting scheduled to be held November 7,  
2000.)*

Exhibit 4 - Pro forma financial statements of the  
Applicant as of September 30, 2000, giving effect to  
the transactions and accounting adjustments herein  
described.

Exhibit 5 - Five-year capital expenditure  
schedule.

19. WHEREFORE, Applicant requests the Commission, on or  
before December 1, 2000, enter an appropriate Order authorizing  
Applicant:

- (a) to issue during the effective period of the  
registration statement up to \$400 million  
principal amount of debt securities with fixed or  
variable interest rates not to exceed 10% on
  - (i) fixed-rate notes or (ii) the initial rate on  
any variable rate or remarketed notes; and

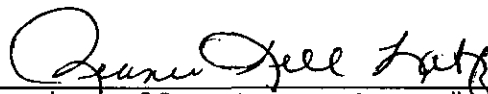


- (b) to enter into interest rate swap or cap agreements with one or more counterparties to swap or cap the interest rate in conjunction with the debt securities issued under this registration.
- (c) to execute all documents necessary for the issuance and take all other actions necessary for the issuance and maintenance of the debt securities.

DATED at Kansas City, Missouri, this 2<sup>nd</sup> day of November,  
2000.

KANSAS CITY POWER & LIGHT COMPANY

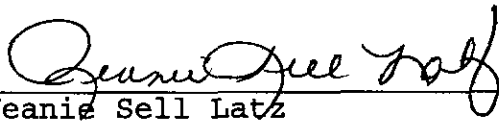
By

  
Jeanie Sell Latz - MOBAR #28193  
Senior Vice President-Corporate  
Services and Corporate Secretary  
Kansas City Power & Light Company  
1201 Walnut  
P. O. Box 418679  
Kansas City, Missouri 64141-9679  
(816) 556-2936

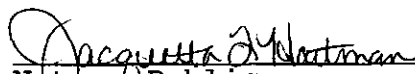
ATTORNEY FOR APPLICANT

STATE OF MISSOURI     )  
                              )     ss  
COUNTY OF JACKSON    )

Jeanie Sell Latz, being first duly sworn, on her oath and in her capacity as Senior Vice President-Corporate Services and Corporate Secretary for Kansas City Power & Light Company, states that she is authorized to execute this Application on behalf of Kansas City Power & Light Company, and has knowledge of the matters stated in this Application, and that said matters are true and correct to the best of her knowledge, information and belief.

  
\_\_\_\_\_  
Jeanie Sell Latz

Subscribed and sworn to before me this 2<sup>ND</sup> of November, 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
April 8, 2004

JACQUETTA L HARTMAN  
NOTARY PUBLIC STATE OF MISSOURI  
RAY COUNTY  
MY COMMISSION EXP. APR. 8, 2004

No. 00040080

# STATE OF MISSOURI



**Rebecca McDowell Cook**  
**Secretary of State**

CORPORATION DIVISION

CERTIFICATE OF CORPORATE GOOD STANDING

I, REBECCA McDOWELL COOK, Secretary of State of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

KANSAS CITY POWER & LIGHT COMPANY

was incorporated under the laws of this State on the 29th day of JULY, 1922, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 23rd day of OCTOBER, 2000.

  
Secretary of State



## APPENDIX NO. 2

Statement in conjunction with 4 CSR 240-2-060(1)(K):

The following is a listing of Applicant's pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this application:

1. GST Appeal of Missouri Public Service Commission; Case No. ER-99-313 in the Circuit Court of Cole County, Missouri; Docket No. 00CV323303.
2. GST Appeal of Missouri Public Service Commission; Case No. EC-99-553 in the Circuit Court of Cole County, Missouri; Docket No. 00CV324891.
3. Hawthorn Station Incident Investigation before the Missouri Public Service Commission; Case No. ES-99-581.
4. Phillip Olson v. KCPL (Commission Complaint) before the Missouri Public Service Commission; Case No. EC-2000-614.

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

Exhibit 1

**Form S-3**  
 REGISTRATION STATEMENT  
 UNDER  
 THE SECURITIES ACT OF 1933

**KANSAS CITY POWER & LIGHT COMPANY**

(Exact name of Registrant as specified in its charter)

Missouri  
 (State of incorporation)

44-0308720  
 (I.R.S. Employer Identification No.)

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

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

**Jeanie Sell Latz**  
 Senior Vice President - Corporate Services,  
 Corporate Secretary and Chief Legal Officer

1201 Walnut  
 Kansas City, Missouri 64106-2124  
 (816) 556-2936

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

**DRAFT**

Copy to:

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

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

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

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

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

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

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

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to Be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit (1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (1)
Debt Securities .....	\$400,000,000	100%(1)	\$400,000,000	\$105,600

(1) Estimated solely for the purpose of calculating the registration fee. The proposed maximum offering price per unit will be determined, from time to time, by the Registrant in connection with the issuance by the Registrant of the Debt Securities registered hereunder. The prospectus filed as part of this Registration Statement also relates to \$100,000,000 of securities remaining available to be offered pursuant to Registration Statement No. 333-17285 and for which a registration fee of \$90,909 was paid.

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

Pursuant to Rule 429 under the Securities Act of 1933, the prospectus filed as part of this Registration Statement may be used in connection with the securities remaining unsold under Registration Statement No. 333-17285.

PROSPECTUS

**DRAFT**

**Kansas City Power & Light Company**

**Debt Securities**

Kansas City Power & Light Company may offer and sell up to \$400,000,000 of our unsecured debt securities. We will establish the specific terms of each series of our debt securities, their offering prices and how they will be offered at the time we offer them, and we will describe them in one or more supplements to this prospectus. This prospectus may not be used to offer and sell our debt securities unless accompanied by a prospectus supplement. You should read this prospectus and the related supplement before you invest in our debt securities.

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**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES  
AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION  
NOR HAVE THESE ORGANIZATIONS DETERMINED THAT THIS  
PROSPECTUS IS ACCURATE OR COMPLETE.  
ANY REPRESENTATION TO THE CONTRARY  
IS A CRIMINAL OFFENSE.**

---

We will offer and sell our debt securities through one or more underwriters or agents. We will set forth in the related prospectus supplement the name of the underwriters or agents, the discount or commission received by them from us as compensation, our other expenses for the offering and sale of the debt securities, and the net proceeds we receive from the sale. See "Plan of Distribution."

**The date of this Prospectus is November \_\_, 2000.**

# DRAFT

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we have filed with the Securities and Exchange Commission using a "shelf" registration process. By using this process, we may offer up to a total dollar amount of \$400,000,000 of our debt securities in one or more offerings. This prospectus provides you with a general description of the debt securities we may offer. Each time we offer debt securities, we will provide you with a supplement to this prospectus that will describe the specific terms of that offering. The prospectus supplement may also add, update or change the information contained in this prospectus. Before you invest, you should carefully read this prospectus, the applicable prospectus supplement and the information contained in the documents we refer to in this prospectus under "Where You Can Find More Information."

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

You should rely only on the information contained or incorporated by reference in this prospectus and any accompanying prospectus supplement. We have not authorized anyone else to provide you with any different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus is current only as of the date of this prospectus.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, and proxy statements and other information with the Securities and Exchange Commission (the "Commission") through the Commission's Electronic Data Gathering, Analysis and Retrieval system and these filings are publicly available through the Commission's Web site (<http://www.sec.gov>). You may read and copy such material at the public reference facilities maintained by the Commission at Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549; at the Commission's New York Regional Office, 7 World Trade Center, 13th Floor, New York, New York 10048; and at its Chicago Regional Office, Northwest Atrium Center, 500 West Madison Street, 14th Floor, Chicago, Illinois 60661. You may obtain information on the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330. You may also obtain copies of such material at prescribed rates from the Public Reference Section of the Commission, 450 Fifth Street, N.W., Washington,

**DRAFT**

D.C. 20549. In addition, you may inspect such material at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

The Commission allows us to "incorporate by reference" into this prospectus the information we file with them. This means that we can disclose important information to you by referring you to the documents containing the information. The information we incorporate by reference is considered to be included in and an important part of this prospectus and should be read with the same care. Information that we file later with the Commission that is incorporated by reference into this prospectus will automatically update and supercede this information. We are incorporating by reference into this prospectus the following documents that we have filed with the Commission and any subsequent filings we make with the Commission under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the offering of the debt securities described in this prospectus is completed:

- our Annual Report on Form 10-K for the year ended December 31, 1999 ("1999 Form 10-K"),
- our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2000, June 30, 2000 and [September 30, 2000], and
- our Current Reports on Form 8-K, dated January 3, 2000 and February 15, 2000.

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

You may obtain a free copy of our filings with the Commission by writing or telephoning us at the following address: Kansas City Power & Light Company, 1201 Walnut, Kansas City, Missouri 64106-2124 (Telephone No.: 816-556-2200) Attention: Corporate Secretary, or by contacting us at our internet web site [www.kcpl.com](http://www.kcpl.com).

## **THE COMPANY**

The Company, a medium-sized electric utility incorporated in Missouri, generates and distributes electricity to over 463,000 customers located in all or portions of 31 counties in western Missouri and eastern Kansas. Customers include 407,000 residences, 53,000 commercial firms, and over 3,000 industries, municipalities and other electric utilities. About two-thirds of the Company's retail sales are to Missouri customers and the remainder to Kansas customers. The address of the Company's principal executive office is 1201 Walnut, Kansas City, Missouri 64106 (Telephone: (816) 556-2200).

## **USE OF PROCEEDS**

Unless we inform you otherwise in a supplement to this prospectus, we anticipate using any net proceeds received by us from the sale of the debt securities for general corporate purposes, including:

- Repayment of short term debt,
- Repurchase, retirement or refinancing of other securities, and



- Funding of construction expenditures.

**DRAFT**

## RATIO OF EARNINGS TO FIXED CHARGES

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

Twelve Months Ended September 30, 2000	Year Ended December 31,				
[     ]	1999(a)	1998(a)	1997(a)	1996(a)	1995
[     ]	2.07	2.87	2.03	3.06	3.94

- (a) We incurred significant merger-related costs relating to two planned mergers, one of which was terminated in 1997 and the other was terminated in 1999. For more information, please see our most recent Form 10-K and 10-Q. See "Where You Can Find More Information."

The ratio of earnings to fixed charges has been computed based upon net income plus federal and state income tax expense and fixed charges. Fixed charges include interest on long-term debt and other interest expense, amortization of debt expense, discount and premium, and a reasonable approximation of the interest factor.

## DESCRIPTION OF DEBT SECURITIES

The debt securities are to be issued under an Indenture to be entered into between the Company and \_\_\_\_\_, as Trustee ("Trustee"), (the "Indenture"), a form of which is included as an exhibit to the registration statement of which this prospectus is a part. The Company may also enter into one or more amendments or supplements to the Indenture, or additional indentures with other trustees, with respect to certain of the debt securities. Any such indenture would contain covenants and other provisions similar to those described below. Alternatively, debt securities in the form of medium-term notes may be issued under an existing indenture. See "Medium-Term Notes" below. Reference is made to the prospectus supplement regarding any additional indentures or additional terms and provisions under which debt securities will be issued.

The Company may from time to time offer under this prospectus unsecured debt securities, which may be senior debt securities or subordinated debt securities. Unless otherwise provided in a prospectus supplement, the senior debt securities will be unsecured obligations of the Company and will rank on a parity with all other unsecured and unsubordinated indebtedness of the Company. The subordinated debt securities ("Subordinated Securities") will be unsecured obligations of the Company, subordinated in right of payment to the prior payment in full of all Senior Indebtedness (which term includes senior debt securities) of the Company as described below under "Subordination" and in the applicable prospectus supplement.

There is no requirement that future issues of debt securities of the Company be issued under the Indenture, and the Company will be free to employ other indentures or documentation, containing provisions different from those included in the Indenture or applicable to one or more issues of securities, in connection with future issues of such other debt securities.

The Indenture does not specifically restrict the ability of the Company to engage in transactions which could have the effect of increasing the ratio of debt to equity capitalization of the Company or a successor corporation. For example, the Indenture does not limit the amount of indebtedness of the Company or the acquisition by the Company of any of the equity securities

of the Company. The Indenture also permits the Company to merge or consolidate or to transfer its assets, subject to certain conditions (see "Consolidation, Merger and Sale" below).

The following summary of the Indenture does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Indenture, including the definitions therein of certain terms.

**General:** The Indenture provides that the debt securities offered and other unsecured debt securities of the Company, without limitation as to aggregate principal amount (collectively the "Indenture Securities"), may be issued in one or more series, in each case as authorized from time to time by the Company.

Reference is made to the prospectus supplement relating to the series of debt securities offered for the following terms:

- (1) the title of the debt securities;
- (2) the aggregate principal amount of the debt securities;
- (3) the percentage of the principal amount representing the price for which the debt securities shall be issued;
- (4) the date or dates on which the principal of, and premium, if any, on the debt securities shall be payable;
- (5) the rate or rates (which may be fixed or variable) at which the debt securities shall bear interest, if any, or the method by which such rate or rates shall be determined;
- (6) if the amount of payments of the principal of, premium, if any, or interest, if any, on the debt securities may be determined with reference to an index, formula or other method, the manner in which such amounts shall be determined;
- (7) the date or dates from which any such interest shall accrue, or the method by which such date or dates shall be determined, the dates on which any such interest shall be payable and any record dates therefor;
- (8) the place or places where the principal of, and premium, if any, and interest, if any, on the debt securities shall be payable;
- (9) the period or periods, if any, within which, the price or prices at which, and the terms and conditions upon which the debt securities may be redeemed, in whole or in part, at the option of the Company;
- (10) the obligation, if any, of the Company to redeem, purchase or repay the debt securities pursuant to any sinking fund or analogous provision or at the option of a holder thereof and the period or periods within which, the price or prices at which, and the terms and conditions upon which the debt securities shall be redeemed, purchased or repaid pursuant to such obligation;
- (11) whether the debt securities are to be issued in whole or in part in the form of one or more Global Securities and, if so, the identity of the Depositary for such Global

- (12) if other than \$1,000 or an integral multiple thereof, the denominations in which the debt securities shall be issued;
- (13) if other than the principal amount thereof, the portion of the principal amount of the debt securities payable upon declaration of acceleration of the maturity of the debt securities;
- (14) any deletions from or modifications of or additions to the Events of Default set forth in Section 6.01 of the Indenture pertaining to the debt securities;
- (15) the provisions, if any, relating to the cancellation and satisfaction of the Indenture with respect to the debt securities prior to the maturity thereof pursuant to Section 12.02 of the Indenture (see "Satisfaction and Discharge of Indenture; Defeasance");
- (16) the terms, if any, upon which the Company may defer payment of interest on an interest payment date;
- (17) the provisions, if any, relating to the subordination of the debt securities pursuant to Article 14 of the Indenture (see "Subordination");
- (18) any additional covenants for the benefit of the holders of the debt securities; and
- (19) any other terms of the debt securities not inconsistent with the provisions of the Indenture and not adversely affecting the rights of any other series of Indenture Securities then outstanding. (Section 2.03)

The Company may authorize the issuance and provide for the terms of a series of Indenture Securities pursuant to a resolution of its Board of Directors or any duly authorized committee thereof or pursuant to a supplemental indenture. The provisions of the Indenture described above permit the Company, in addition to issuing Indenture Securities with terms different from those of Indenture Securities previously issued, to "reopen" a previous issue of a series of Indenture Securities and to issue additional Indenture Securities of such series.

The Indenture Securities will be issued only in registered form without coupons and, unless otherwise provided with respect to a series of Indenture Securities, in denominations of \$1,000 and integral multiples thereof. (Section 2.02) Indenture Securities of a series may be issued in whole or in part in the form of one or more Global Securities (see "Global Securities"). One or more Global Securities will be issued in a denomination or aggregate denominations equal to the aggregate principal amount of outstanding Indenture Securities of the series to be represented by such Global Security or Global Securities. (Section 2.01) No service charge will be made for any transfer or exchange of Indenture Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. (Section 2.05)

One or more series of the Indenture Securities may be issued with the same or various maturities at par, above par or at a discount. Debt securities bearing no interest or interest at a rate which at the time of issuance is below the market rate ("Original Issue Discount Securities") will be sold at a discount (which may be substantial) below their stated principal

amount. Federal income tax consequences and other special considerations applicable to any such Original Issue Discount Securities will be described in the prospectus supplement relating thereto.

**Subordination:** If the prospectus supplement relating to a particular series of Indenture Securities so provides, such debt securities will be Subordinated Securities and the payment of the principal of, premium, if any, and interest on the Subordinated Securities will be subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness to the extent set forth in the next paragraph. (Section 14.01)

In the event (a) of any distribution of assets of the Company in bankruptcy, reorganization or receivership proceedings, or upon an assignment for the benefit of creditors, or any other marshalling of assets and liabilities of the Company, except for a distribution in connection with a consolidation, merger, sale, transfer or lease permitted under the Indenture (see "Consolidation, Merger and Sale"), or (b) the principal of any Senior Indebtedness shall have been declared due and payable by reason of an event of default with respect thereto and such event of default shall not have been rescinded, then the holders of Subordinated Securities will not be entitled to receive or retain any payment, or distribution of assets of the Company, in respect of the principal of, premium, if any, and interest on the Subordinated Securities until the holders of all Senior Indebtedness receive payment of the full amount due in respect of the principal of, premium, if any, and interest on the Senior Indebtedness or provision for such payment on the Senior Indebtedness shall have been made. (Section 14.02)

Subject to the payment in full of all Senior Indebtedness, the holders of the Subordinated Securities shall be subrogated to the rights of the holders of the Senior Indebtedness to receive payments or distributions applicable to the Senior Indebtedness until all amounts owing on the Subordinated Securities shall be paid in full. (Section 14.03)

"Senior Indebtedness" means all indebtedness of the Company for the repayment of money borrowed (whether or not represented by bonds, debentures, notes or other securities) other than the indebtedness evidenced by the Subordinated Securities and any indebtedness subordinated to, or subordinated on parity with, the Subordinated Securities. "Senior Indebtedness" does not include customer deposits or other amounts securing obligations of others to the Company. (Section 14.01)

The Indenture does not limit the aggregate amount of Senior Indebtedness that the Company may issue. As of September 30, 2000, \$\_\_\_ million of Senior Indebtedness was outstanding.

**Redemption:** If the prospectus supplement relating to a particular series of Indenture Securities so provides, such securities will be subject to redemption by the Company prior to maturity. Notice of any redemption of Indenture Securities shall be given to the registered holders of such securities not less than 30 days nor more than 60 days prior to the date fixed for redemption. If less than all of a series of Indenture Securities are to be redeemed, the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Indenture Securities of such series or portions thereof to be redeemed. (Section 3.02)

**Global Securities:** The Indenture Securities of a series may be issued in whole or in part in the form of one or more Global Securities that will be deposited with, or on behalf of, the Depositary identified in the prospectus supplement relating thereto. Unless and until it is exchanged in whole or in part for Indenture Securities in definitive form, a Global Security may

not be transferred except as a whole by the Depositary for such Global Security to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. (Sections 2.01 and 2.05)

The specific terms of the depositary arrangement with respect to any Indenture Securities of a series will be described in the prospectus supplement relating thereto. The Company anticipates that the following provisions will apply to all depositary arrangements.

Upon the issuance of a Global Security, the Depositary for such Global Security will credit, on its book entry registration and transfer system, the respective principal amounts of the Indenture Securities represented by such Global Security to the accounts of institutions that have accounts with such Depositary ("participants"). The accounts to be credited shall be designated by the underwriters through which such Indenture Securities were sold. Ownership of beneficial interests in a Global Security will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests in such Global Security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the Depositary for such Global Security or by participants or persons that hold through participants. The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a Global Security.

So long as the Depositary for a Global Security, or its nominee, is the owner of such Global Security, such Depositary or such nominee, as the case may be, will be considered the sole owner or holder of the Indenture Securities represented by such Global Security for all purposes under the Indenture. Except as set forth below, owners of beneficial interests in a Global Security will not be entitled to have Indenture Securities of the series represented by such Global Security registered in their names, will not receive or be entitled to receive physical delivery of Indenture Securities of such series in definitive form and will not be considered the owners or holders thereof under the Indenture.

Payments of principal of, premium, if any, and interest, if any, on Indenture Securities registered in the name of or held by a Depositary or its nominee will be made to the Depositary or its nominee, as the case may be, as the registered owner of the Global Security representing such Indenture Securities. None of the Company, the Trustee or any paying agent for such Indenture Securities will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in a Global Security for such Indenture Securities or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company expects that the Depositary for Indenture Securities of a series, upon receipt of any payment of principal, premium, if any, or interest, if any, in respect of a Global Security will credit immediately participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Security as shown on the records of such Depositary. The Company also expects that payments by participants to owners of beneficial interests in such Global Security held through such participants will be governed by standing instructions and customary practices, as is now the case with securities registered in "street name," and will be the responsibility of such participants.

If a Depositary for Indenture Securities of a series is at any time unwilling or unable to continue as Depositary and a successor Depositary is not appointed by the Company within 90

days, the Company will issue Indenture Securities of such series in definitive form in exchange for the Global Security or Global Securities representing the Indenture Securities of such series. In addition, the Company may at any time and in its sole discretion determine not to have any Indenture Securities of a series represented by one or more Global Securities and, in such event, will issue Indenture Securities of such series in definitive form in exchange for the Global Security or Global Securities representing such Indenture Securities. Further, if the Company so specifies with respect to the Indenture Securities of a series, each person specified by the Depositary of the Global Security representing Indenture Securities of such series may, on terms acceptable to the Company and the Depositary for such Global Security, receive Indenture Securities of the series in definitive form. In any such instance, each person so specified by the Depositary of the Global Security will be entitled to physical delivery in definitive form of Indenture Securities of the series represented by such Global Security equal in principal amount to such person's beneficial interest in the Global Security.

**Payments and Paying Agents:** Payment of principal of and premium, if any, on Indenture Securities will be made against surrender of such Indenture Securities at the principal offices of the Trustee. Unless otherwise indicated in the prospectus supplement, payment of any installment of interest on Indenture Securities will be made to the person in whose name such Indenture Security is registered at the close of business on the record date for such interest. Unless otherwise indicated in the prospectus supplement, payments of such interest will be made at the principal offices of the Trustee, or by a check mailed to each holder of an Indenture Security at such holder's registered address.

All moneys paid by the Company to a paying agent for the payment of principal of, premium, if any, or interest, if any, on any Indenture Security that remain unclaimed at the end of two years after such principal, premium or interest shall have become due and payable will be repaid to the Company and the holder of such Indenture Security entitled to receive such payment will thereafter look only to the Company for payment thereof. (Section 12.05) However, any such payment shall be subject to escheat pursuant to state abandoned property laws.

**Consolidation, Merger and Sale:** The Indenture permits the Company, without the consent of the holders of any of the Indenture Securities, to consolidate with or merge into any other corporation or sell, transfer or lease its assets as an entirety or substantially as an entirety to any person, provided that: (i) the successor corporation is a corporation organized under the laws of the United States of America or any state thereof; (ii) the successor corporation assumes the Company's obligations under the Indenture and the Indenture Securities; (iii) immediately after giving effect to the transaction, no Event of Default (see "Default and Certain Rights on Default") and no event that, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and (iv) certain other conditions are met. (Section 11.02) The Indenture does not restrict the merger of another corporation into the Company.

**Modification of the Indenture:** The Indenture contains provisions permitting the Company and the Trustee, without the consent of the holders of the Indenture Securities, to establish, among other things, the form and terms of any series of Indenture Securities issuable thereunder by one or more supplemental indentures, and, with the consent of the holders of a majority in aggregate principal amount of the Indenture Securities of any series at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture with respect to Indenture Securities of such series, or modifying in any manner the rights of the holders of the Indenture Securities of such series; provided,

however, that no such supplemental indenture shall (i) extend the fixed maturity, or the earlier optional date of maturity, if any, of any Indenture Security of a particular series or reduce the principal amount thereof or the premium thereon, if any, or reduce the rate of payment of interest thereon, or make the principal thereof or premium, if any, or interest thereon payable in any coin or currency other than that provided in the Indenture Security, without the consent of the holder of each Indenture Security so affected, or (ii) reduce the principal amount of Indenture Securities of any series, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Indenture Securities of such series outstanding thereunder. (Sections 10.01 and 10.02)

**Default and Certain Rights on Default:** The Indenture provides that the Trustee or the holders of 25% or more in aggregate principal amount of Indenture Securities of a series outstanding thereunder may declare the principal of all Indenture Securities of such series to be due and payable immediately, if any Event of Default with respect to such series of Indenture Securities shall occur and be continuing. However, if all defaults with respect to Indenture Securities of such series (other than non-payment of accelerated principal) are cured, the holders of a majority in aggregate principal amount of the Indenture Securities of such series outstanding thereunder may waive the default and rescind the declaration and its consequences. Events of Default with respect to a series of Indenture Securities include (unless specifically deleted in the supplemental indenture or Board Resolution under which such series of Indenture Securities is issued, or modified in any such supplemental indenture):

- (i) failure to pay interest when due on any Indenture Security of such series, continued for 30 days;
- (ii) failure to pay principal or premium, if any, when due on any Indenture Security of such series;
- (iii) failure to perform any other covenant of the Company in the Indenture or the Indenture Securities of such series (other than a covenant included in the Indenture or the Indenture Securities solely for the benefit of series of Indenture Securities other than such series), continued for 60 days after written notice from the Trustee or the holders of 25% or more in aggregate principal amount of the Indenture Securities of such series outstanding thereunder;
- (iv) certain events of bankruptcy, insolvency or reorganization; and
- (v) any other Event of Default as may be specified for such series. (Section 6.01)

The Indenture provides that the holders of a majority in aggregate principal amount of the Indenture Securities of any series outstanding thereunder may, subject to certain exceptions, direct the time, method and place of conducting any proceeding for any remedy available to, or exercising any power or trust conferred upon, the Trustee with respect to Indenture Securities of such series and may on behalf of all holders of Indenture Securities of such series waive any past default and its consequences with respect to Indenture Securities of such series, except a default in the payment of the principal of or premium, if any, or interest on any of the Indenture Securities of such series. (Section 6.06)

Holders of Indenture Securities of any series may not institute any proceeding to enforce the Indenture unless the Trustee thereunder shall have refused or neglected to act for 60 days after a request and offer of satisfactory indemnity by the holders of 25% or more in



aggregate principal amount of the Indenture Securities of such series outstanding thereunder, but the right of any holder of Indenture Securities of any series to enforce payment of principal of or premium, if any, or interest on the holder's Indenture Securities when due shall not be impaired. (Section 6.04)

The Trustee is required to give the holders of Indenture Securities of any series notice of defaults with respect to such series (Events of Default summarized above, exclusive of any grace period and irrespective of any requirement that notice of default be given) known to it within 90 days after the happening thereof, unless cured before the giving of such notice, but, except for defaults in payments of principal of, premium, if any, or interest on the Indenture Securities of such series, the Trustee may withhold notice if and so long as it determines in good faith that the withholding of such notice is in the interests of such holders. (Section 6.07)

The Company is required to deliver to the Trustee each year an Officers' Certificate stating whether such officers have obtained knowledge of any default by the Company in the performance of certain covenants and, if so, specifying the nature thereof. (Section 4.06)

**Concerning the Trustee:** The Indenture provides that the Trustee shall, prior to the occurrence of any Event of Default with respect to the Indenture Securities of any series and after the curing or waiving of all Events of Default with respect to such series which have occurred, perform only such duties as are specifically set forth in the Indenture. During the existence of any Event of Default with respect to the Indenture Securities of any series, the Trustee shall exercise such of the rights and powers vested in it under the Indenture with respect to such series 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. (Section 7.01)

The Trustee may acquire and hold Indenture Securities and, subject to certain conditions, otherwise deal with the Company as if it were not the Trustee under the Indenture. (Section 7.04)

[\_\_\_\_\_, which is the Trustee under the Indenture, is a depository for funds and performs other services for, and transacts other banking business with, the Company and its affiliates in the normal course of business.]

**Satisfaction and Discharge of Indenture; Defeasance:** The Indenture may be discharged upon payment of the principal of, premium, if any, and interest on all the Indenture Securities and all other sums due under the Indenture. In addition, the Indenture provides that if, at any time after the date of the Indenture, the Company, if so permitted with respect to Indenture Securities of a particular series, shall deposit with the Trustee, in trust for the benefit of the holders thereof, (i) funds sufficient to pay, or (ii) such amount of obligations issued or guaranteed by the United States of America as will, or will together with the income thereon without consideration of any reinvestment thereof, be sufficient to pay all sums due for principal of, premium, if any, and interest on the Indenture Securities of such series, as they shall become due from time to time, and certain other conditions are met, the Trustee shall cancel and satisfy the Indenture with respect to such series to the extent provided therein. (Sections 12.01 and 12.02) The prospectus supplement describing the Indenture Securities of such series will more fully describe the provisions, if any, relating to such cancellation and satisfaction of the Indenture with respect to such series.

**Reports Furnished Securityholders:** The Company will furnish the holders of Indenture Securities copies of all annual financial reports distributed to its stockholders generally

as soon as practicable after the mailing of such material to the stockholders. (Section 4.07)

**Medium-Term Notes:** The debt securities that we offer from time to time may also take the form of medium-term notes. The medium-term notes are to be issued under an indenture, dated December 1, 1996, between the Company and The Bank of New York, as trustee thereunder, a copy of which is filed as an exhibit to the registration statement of which this prospectus is a part. The particular terms of the medium-term notes will be described in the applicable prospectus supplement.

## **PLAN OF DISTRIBUTION**

The Company will offer the debt securities through one or more underwriters or agents. The names of the managing underwriter or underwriters and any other underwriters or agents, and the terms of the transaction, including compensation of the underwriters, agents and dealers, if any, will be set forth in the prospectus supplement relating to the offering of the debt securities.

Only underwriters named in a prospectus supplement will be deemed to be underwriters in connection with the debt securities described therein. Firms not so named will have no direct or indirect participation in the underwriting of such debt securities, although such a firm may participate in the distribution of such debt securities under circumstances entitling it to a dealer's commission.

It is anticipated that any agreement pertaining to any debt securities will (1) entitle the underwriters or agents to indemnification by the Company against certain civil liabilities under the Securities Act of 1933, as amended, or to contribution for payments the underwriters may be required to make in respect thereof and (2) provide that the obligations of the underwriters or agents will be subject to certain conditions precedent. The underwriters or agents may engage in transactions with, or perform services for, the Company in the ordinary course of business.

In connection with an offering made hereby, the underwriters may purchase and sell the debt securities in the open market. These transactions may include over-allotment and stabilizing transactions and purchases to cover short positions created by the underwriters in connection with an offering. Stabilizing transactions consist of certain bids or purchases for the purpose of preventing or delaying a decline in the market price of the debt securities, and short positions created by the underwriters involve the sale by the underwriters of a greater aggregate principal amount of debt securities than they are required to purchase from the Company. The underwriters also may impose a penalty bid, whereby selling concessions allowed to broker-dealers in respect of the debt securities sold in the offering may be reclaimed by the underwriters if such debt securities are repurchased by the underwriters in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the debt securities, which may be higher than the price that might otherwise prevail in the open market; and these activities, if commenced, may be discontinued at any time. These transactions may be affected in the over-the-counter market or otherwise.

The anticipated date of delivery of the debt securities will be as set forth in the prospectus supplement relating to the offering of the debt securities.

## **LEGAL MATTERS**

The validity of the debt securities and certain other related legal matters will be

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passed upon for the Company by Jeanie Sell Latz, Senior Vice President - Corporate Services, Corporate Secretary and Chief Legal Officer. Certain legal matters in connection with the debt securities will be passed upon for the Underwriters by Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, New York 10019-6092.

#### **EXPERTS**

The consolidated financial statements included in the latest Annual Report on Form 10-K of the Company, incorporated by reference in this prospectus, have been audited by PricewaterhouseCoopers LLP, independent accountants, as stated in their report included in the latest Annual Report on Form 10-K of the Company, and have been incorporated by reference in this prospectus in reliance upon the report of such firm, given upon their authority as experts in auditing and accounting.

## PART II

## INFORMATION NOT REQUIRED IN PROSPECTUS

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

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

Securities and Exchange Commission	
registration fee .....	\$105,600.00
Printing and engraving .....	[29,400.00]
Services of Independent Accountants .....	[100,000.00]
Fees and expenses of Trustee .....	[40,000.00]
Rating agency fees .....	[75,000.00]
Miscellaneous .....	[100,000.00]
 Total ..	 \$[450,000.00]*

\* Each prospectus supplement will reflect estimated expenses of the Company based upon the amount of the related offering.

## Item 15. Indemnification of Directors and Officers.

[Mo. Rev. Stat. Section 351.355 (1994)] provides as follows:

1. A corporation created under the laws of this state may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suitor proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the act that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

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

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

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

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

officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7. A corporation created under the laws of this state shall have the power to give any further indemnity, in addition to the indemnity authorized or contemplated under other subsections of this section, including subsection 6, to any person who is or was a director, officer, employee or agent, or to any person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided such further indemnity is either (i) authorized, directed, or provided for in the articles of incorporation of the corporation or any duly adopted amendment thereof or (ii) is authorized, directed, or provided for in any bylaw or agreement of the corporation which has been adopted by a vote of the shareholders of the corporation, and provided further that no such indemnity shall indemnify any person from or on account of such person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Nothing in this subsection shall be deemed to limit the power of the corporation under subsection 6 of this section to enact bylaws or to enter into agreements without shareholder adoption of the same.

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

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

10. For the purpose of this section, references to "the corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director, officer employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity.

11. For purposes of this section, the term "other enterprise" shall include employee benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and the term "serving at the request of the

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corporation" shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

The officers and directors of the Company have entered into indemnification agreements with the Company indemnifying such officers and directors to the extent allowed under the above [Mo. Rev. Stat. Section 351.355 (1994)].

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

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

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

shareholders need not be further approved by the shareholders of the Company in order to be fully effective and enforceable.

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

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

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

Item 16. List of Exhibits.

- 1(a) - Form of Underwriting Agreement.\*
- 1(b) - Form of Distribution Agreement. \*
- 4(a) - Form of Indenture, between the Company and \_\_ ("\_\_\_"), as Trustee (the "Notes Indenture").



# DRAFT

- 4(b) - Indenture, dated as of December 1, 1996, between the Company and The Bank of New York (the "MTN Indenture") (Designated in Registration Statement No. 333-17285 as Exhibit 4).
- 5 - Opinion and consent of Jeanie Sell Latz, Senior Vice President - Corporate Services, Corporate Secretary and Chief Legal Officer.
- 12.1 - Schedule of computation of ratio of earnings to fixed charges for the years ended December 31, 1999, 1998, 1997, 1996 and 1995.
- 12.2 - Schedule of computation of ratio of earnings to fixed charges for the twelve month periods ended September 30, 2000 and 1999.
- 23.1 - Consent of PricewaterhouseCoopers LLP.
- 23.2 - Consent of Jeanie Sell Latz, Senior Vice President - Corporate Services, Corporate Secretary and Chief Legal Officer (included as part of Exhibit 5).
- 24 - Powers of Attorney.
- 25(a) - Form T-1 Statement of Eligibility and Qualification of \_\_\_, as Trustee under the Notes Indenture, under the Trust Indenture Act of 1939.
- 25(b) - Form T-1 Statement of Eligibility and Qualification of The Bank of New York, as Trustee under the MTN Indenture, under the Trust Indenture Act of 1939 (Designated in Registration Statement No. 333-17285 as Exhibit 25).

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

---

\* To be subsequently filed or incorporated by reference

## Item 17. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act; (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the

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

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

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

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

(h) See the last paragraph of Item 15.

(i) The undersigned Registrant hereby undertakes that, (1) for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective, and (2) for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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## INDEX TO EXHIBITS

EXHIBIT	DESCRIPTION
1(a) -	Form of Underwriting Agreement.*
1(b) -	Form of Distribution Agreement. *
4(a) -	Form of Indenture, between the Company and __ ("___"), as Trustee (the "Notes Indenture").
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Exhibits listed above which have heretofore been filed with the Commission and which were designated as noted above are hereby incorporated herein by reference and made a part hereof with the same effect as if filed herewith.

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\* To be subsequently filed or incorporated by reference

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**KANSAS CITY POWER & LIGHT COMPANY**

**AND**

**DRAFT**

**Trustee**

**INDENTURE**

**Dated as of , 2000**

**Providing for the Issuance of  
Debt Securities**

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CROSS REFERENCE SHEET\*

Between

Provisions of Trust Indenture Act of 1939,  
As Amended.

and

Indenture dated as of , 2000 between  
Kansas City Power & Light Company  
and [ ],  
Trustee

Section of Act

Section of Indenture

310 (a) (1) and (2)	4.04 and 7.08
310 (a) (3) and (4)	Not Applicable
310 (b)	7.07 and 7.09(b)
310 (c)	Not Applicable
311 (a) and (b)	7.12
311 (c)	Not Applicable
312 (a)	5.01 and 5.02 (a)
312 (b) and (c)	5.02 (b) and (c)
313 (a) (1), (2), (3), (5), (6) and (7)	5.04 (a)
313 (a) (6)	Not Applicable
313 (b) (1)	Not Applicable
313 (b) (2)	5.04 (b)
313 (c)	5.04 (b)
313 (d)	5.04 (c)
314 (a)	5.03
314 (b)	Not Applicable
314 (c) (1) and (2)	15.06
314 (c) (3)	Not Applicable
314 (d)	Not Applicable
314 (e)	15.06
314 (f)	Not Applicable
315 (a), (c) and (d)	7.01
315 (b)	6.07
315 (e)	6.08
316 (a) (1)	6.06
316 (a) (2)	Omitted
316 (a) last paragraph	8.04
316 (b)	6.04
317 (a)	6.02
317 (b)	4.05 and 7.05
318 (a)	15.07

\* This Cross Reference Sheet is not part of the Indenture.

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THIS INDENTURE, dated as of , 2000, between KANSAS CITY POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Missouri (herein called the "Company"), and [ ], a banking corporation organized and existing under the laws of the State of New York (herein called the "Trustee"):

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance in one or more series from time to time of its unsecured debentures, notes or other evidences of indebtedness (hereinafter called the "Securities") and to provide the general terms and conditions upon which the Securities are to be authenticated, issued and delivered;

WHEREAS, the Trustee has power to enter into this Indenture and to accept and execute the trusts herein created; and

WHEREAS, the Company represents that all acts and things necessary to make the Securities, when executed by the Company and authenticated and delivered by the Trustee as in this Indenture provided, and duly issued by the Company, the valid, binding and legal obligations of the Company will, at the time of such execution, authentication and delivery, have been done and performed; that all acts and things necessary to constitute these presents a valid indenture and agreement according to its terms have been done and performed; that the execution of this Indenture by the Company has in all respects been duly authorized; and that the issue hereunder of the Securities will, at the time of the issue thereof, have in all respects been duly authorized; and the Company, in the exercise of each and every legal right and power in it vested, executes this Indenture and proposes to make, execute, issue and deliver the Securities;

NOW, THEREFORE:

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

## **ARTICLE ONE**

### **Definitions**

SECTION 1.01. Certain Terms Defined. The following terms (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in this Indenture which are defined (either directly or by reference) in the Trust Indenture Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings so assigned to such terms.

#### Board of Directors:

The term "Board of Directors" shall mean the Board of Directors of the Company or any duly authorized committee of such Board.

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Board Resolution:

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

Business Day:

The term "Business Day" means, with respect to any series of Securities, any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in the Borough of Manhattan, the City of New York and the State of New York or the State of Missouri, are authorized or obligated by law or executive order to close.

Company:

The term "Company" shall mean the person named as the Company in the first paragraph of this instrument until a successor corporation shall have become such pursuant to Article Eleven of this Indenture, and thereafter "Company" shall mean such successor corporation.

Company Order:

The term "Company Order" shall mean the written order, request or instruction of the Company signed on behalf of the Company by its Chairman of the Board, Vice Chairman, President or a Vice President and by its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary.

Corporation:

The term "corporation" shall mean any corporation, voluntary association, joint stock company, business trust or other similar organization.

Depository:

The term "Depository" shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as Depository by the Company pursuant to Section 2.03 until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean or include each person who is then a Depository hereunder, and if at any time there is more than one such person, "Depository" as used with respect to the Securities of any such series shall mean the Depository with respect to the Securities of that series.

Event of Default:

The term "Event of Default" shall mean any event specified in Section 6.01, continued for the period of time, if any, and after the giving of the notice, if any, therein designated.

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Global Security:

The term "Global Security" shall mean a Security evidencing all or part of a series of Securities issued to a Depositary for such series in accordance with Section 2.01.

Indenture:

The term "Indenture" shall mean this instrument as originally executed or as it may from time to time be supplemented and amended by one or more indentures supplemental hereto pursuant to Article Ten hereof and shall include the form and terms of particular series of Securities established as contemplated in Section 2.03.

Interest:

The term "interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after maturity, shall mean interest payable after maturity, at the rate prescribed in such Original Issue Discount Security.

Interest Payment Date:

The term "interest payment date" when used with respect to any Security or any installment of interest thereon shall mean the date specified in such Security as the fixed date on which such installment of interest is due and payable.

Officers' Certificate:

The term "Officers' Certificate" shall mean a certificate signed by the Chairman of the Board, Vice Chairman, President or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company.

Opinion of Counsel:

The term "Opinion of Counsel" shall mean an opinion in writing signed by legal counsel, who may be an employee of or of counsel to the Company.

Original Issue Discount Security:

The term "Original Issue Discount Security" shall mean any Security that provides for an amount less than the principal thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01.

Outstanding:

The term "outstanding", when used with reference to Securities, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Securities theretofore authenticated and delivered by the Trustee under this Indenture, except:

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

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(b) Securities or portions thereof for the payment or redemption of which moneys, or as provided in Section 12.02 hereof, direct obligations of the United States of America, in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own paying agent), provided that if such Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article Three provided, or provision satisfactory to the Trustee shall have been made for giving such notice); and

(c) Securities which have been paid pursuant to Section 2.07 or in exchange for or in lieu of which other Securities shall have been authenticated and delivered pursuant to Section 2.07;

provided, however, that in determining whether the holders of the requisite principal amount of Outstanding Securities have taken any action, given any request, demand, authorization, direction, notice, consent or waiver hereunder or whether a quorum is present at a meeting of Securityholders, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the maturity thereof pursuant to Section 6.01.

Person:

The term "person" shall mean an individual, a corporation, a partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

Principal Office of the Company:

The term "principal office of the Company" shall mean the principal office of the Company as shall be specified from time to time in a Company Order delivered to the Trustee. Any such Company Order may specify a principal office of the Company for one or more purposes under this Indenture and such Company Order or one or more other Company Orders may specify one or more other principal offices of the Company for one or more other purposes under this Indenture.

Record Date:

The term "record date" shall mean, with respect to any interest payable on any Security on any interest payment date, the close of business on the date specified in such Security or, in the case of defaulted interest, the close of business on any subsequent record date established as provided in Section 2.02 (in each case whether or not such day is a Business Day).

Registered Holder:

The term "registered holder", "Securityholder", "holder" or other similar term shall mean the person or persons in whose name or names a particular Security shall be registered upon the Security Register.

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Responsible Officer:

The term "responsible officer", when used with respect to the Trustee, shall mean any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

Securityholder:

The term "Securityholder" shall have the meaning specified under the term "registered holder".

Security Register:

The term "Security Register" shall have the meaning specified in Section 2.05.

Successor:

The term "Successor" shall have the meaning specified in Section 11.02.

Trustee:

The term "Trustee" shall mean the person named as Trustee in the first paragraph of this instrument and, subject to the provisions of Article Seven of this Indenture, shall also include its successors and assigns, and if at any time there is more than one trustee, "Trustee" as used with respect to the Securities of any series shall mean the trustee with respect to Securities of that series.

Trust Indenture Act:

The term "Trust Indenture Act" shall mean the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Section 10.02; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

Vice President:

The term "Vice President", when used with respect to the Company, shall mean any Vice President, any Senior Vice President, any Executive Vice President and any Senior Executive Vice President of the Company.

## **ARTICLE TWO**

### **Issue, Description, Execution, Exchange and Registration of Transfer of Securities**

SECTION 2.01. Authentication, Delivery and Dating. At any time and from time to time after the execution and delivery of this instrument, the Company may deliver

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Securities of any series executed by the Company to the Trustee for authentication. The Trustee shall thereupon authenticate and deliver such Securities upon receipt of, and pursuant to, a Company Order, without any further action by the Company. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 7.01) shall be fully protected in relying upon:

(a) a Board Resolution relating thereto and, if applicable, an appropriate record of any action taken pursuant to such resolution, certified by the Secretary or an Assistant Secretary of the Company;

(b) an executed supplemental indenture, if any;

(c) an Officers' Certificate, dated the date such Officers' Certificate is delivered to the Trustee, prepared in accordance with Section 15.06; and

(d) an Opinion of Counsel prepared in accordance with Section 15.06, which shall also state:

(1) that the form and terms of such Securities have been established by or pursuant to one or more Board Resolutions, by a supplemental indenture as permitted by Section 10.01(e), or by both such resolution or resolutions and such supplemental indenture, in conformity with the provisions of this Indenture;

(2) that the supplemental indenture, if any, when executed and delivered by the Company and the Trustee, will constitute a valid and legally binding obligation of the Company; and

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

If the Company shall establish pursuant to Section 2.03 that the Securities of a series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee upon receipt of, and pursuant to, a Company Order, shall, in accordance with this Section, authenticate and deliver one or more Global Securities that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by one or more Global Securities, (ii) shall be registered in the name of the Depositary for such Global Security or Global Securities or

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the nominee of such Depositary, and (iii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instruction.

Each Depositary designated pursuant to Section 2.03 for a Global Security must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and any other applicable statute or regulation.

Each Security shall be dated the date of its authentication.

Notwithstanding the provisions of this Section and Section 2.03, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 2.03 or the Company Order, Board Resolution, Officers' Certificate and Opinion of Counsel otherwise required pursuant to this Section at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued. After any such first delivery, any separate written request by the Company that the Trustee authenticate Securities of such series for original issue will be deemed to be a certificate by the Company that all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Securities continue to have been complied with.

**SECTION 2.02. Forms Generally.** The Securities of each series shall be issuable in registered form without coupons and shall be in substantially the form as shall be established by or pursuant to one or more Board Resolutions or in one or more indentures supplemental hereto, 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 or designation and such legends or endorsements printed, lithographed or engraved thereon as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. The Securities shall be issued, except as otherwise provided with respect to any series of Securities pursuant to Section 2.03, in the denomination of \$1,000 and any larger denomination which is an integral multiple of \$1,000 approved by the Company, such approval to be evidenced by the execution thereof.

The person in whose name any Security is registered at the close of business on any record date with respect to any interest payment date shall be entitled to receive the interest payable on such interest payment date, notwithstanding the cancellation of such Security upon any transfer or exchange subsequent to such record date and prior to such interest payment date, unless such Security is redeemed on a date fixed for redemption after such record date and prior to such interest payment date; provided, however, that if and to the extent the Company shall fail to pay on any interest payment date the interest due on such date, such defaulted interest shall be paid to the persons in whose names outstanding Securities are registered at the close of business on the tenth day preceding the date of payment of such defaulted interest or, at the election of the Company, to the persons in whose names outstanding Securities are registered on a subsequent record date established by notice given by mail by or on behalf of the Company to the holders of such Securities not less than 10 days preceding such subsequent record date, which subsequent record date shall precede by at least 10 days the date of payment of such defaulted interest. Such

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notice shall be given to the persons in whose names such outstanding Securities are registered at the close of business on the fifth Business Day next preceding the date of the mailing of such notice.

Except as otherwise provided with respect to any series of Securities pursuant to Section 2.03, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

The Trustee's certificate of authentication on all Securities shall be in substantially the following form:

This is one of the Securities of the series designated herein issued under the Indenture described herein.

[                      ],  
as Trustee

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

**SECTION 2.03. Amount; Terms of Series.** The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is not limited.

The Securities may be issued in one or more series. There shall be established by or pursuant to one or more Board Resolutions, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(a) the title of the Securities of the series (which shall distinguish the Securities of the series from the Securities of all other series, except to the extent that additional Securities of an existing series are being issued);

(b) any limit upon the aggregate principal amount of the Securities of the series which may be outstanding under this Indenture (except as otherwise provided in Sections 2.05, 2.06 and 2.07);

(c) the date or dates on which the principal of and premium, if any, on the Securities of the series is payable;

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(d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue, or the method by which such date or dates shall be determined, the interest payment dates on which any such interest shall be payable and the record dates for the determination of holders to whom interest of any interest payment date is payable, the basis of computation of interest (if other than as provided in Section 2.02), and the right, if any, to extend or advance the maturity of the Securities and the conditions to such extension or advancement;

(e) if the amount of payments of the principal of, premium, if any, or interest, if any, on the Securities of the series may be determined with reference to an index, formula, or other method, the manner in which such amounts shall be determined;

(f) the place or places where the principal of, premium, if any, and interest on Securities of the series shall be payable;

(g) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;

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

(i) whether the Securities of the series shall be issued in whole or in part in the form of one or more Global Securities and, in such case, the Depositary for such Global Security or Global Securities;

(j) if other than the principal amount thereof, the portion of the principal amount of any Securities which shall be payable upon declaration of acceleration of maturity thereof pursuant to Section 6.01;

(k) if other than denomination of \$1,000 or any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(l) if the provisions of Section 12.02 are to apply to the Securities of the series, a statement indicating the same;

(m) if the provisions of Section 2.09 are to apply to the Securities of the series, the terms upon which the Company may elect to defer the payment of interest on an interest payment date;

(n) if the provisions of Article Fourteen are to apply to the Securities of the series, a statement indicating the same;

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(o) if the Securities of such series are to be deposited as trust assets in a trust, the name of the applicable trust into which the Securities of such series are to be deposited;

(p) any exchangeability, conversion or prepayment provisions of the Indenture;

(q) any restriction or condition on the transferability of a series of Securities; and

(r) any other terms of the Securities of the series, including additional covenants of the Company and specific modifications, additions or deletions in the Events of Default applicable to the series from those set forth in Section 6.01 (which terms shall not be inconsistent with the provisions of this Indenture or adversely affect the rights of the holders of any other series of Securities then outstanding).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided by or pursuant to any such Board Resolution, and set forth in such Officers' Certificate, or in any such indenture supplemental hereto.

SECTION 2.04. Execution. The Securities shall be signed on behalf of the Company by the Chairman or President or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company, under its corporate seal. Such signatures may be manual or facsimile signatures of the present or any future such authorized officers and may be imprinted or otherwise reproduced on the Securities. The seal of the Company may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities.

Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder.

In case any officer of the Company who shall have signed any of the Securities either manually or by facsimile signature shall cease to be such officer before the Securities so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Securities nevertheless may be authenticated and delivered or disposed of as though the person who signed such Securities had not ceased to be such officer of the Company; and any Security may be signed on behalf of the Company by such person as, at the actual date of the execution of such Security, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such officer.

SECTION 2.05. Exchange, Registration and Registration of Transfer. The Company shall keep, at the office or agency to be maintained by the Company in accordance with Section 4.02, a register or registers (herein sometimes referred to collectively as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of each series of the Securities and for the registration

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of transfers of Securities of each series as in this Article provided. The Security Register shall be in written form or convertible into written form without unreasonable delay, and shall be open for inspection by the Trustee at all reasonable times. Subject to the provisions of the last paragraph of this Section 2.05, upon surrender for registration of transfer of any Security of any series at the office or agency maintained in accordance with Section 4.02, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series and of like tenor, or any authorized denominations and of a like aggregate principal amount and maturity.

At the option of the holder thereof, Securities of any series (except a Global Security) may be exchanged for other Securities of the same series and of like tenor, of any authorized denominations and of a like aggregate principal amount and maturity, upon surrender of the Securities to be exchanged at the office or agency maintained in accordance with Section 4.02. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the holder making the exchange is entitled to receive.

Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for Securities in definitive form, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

If at any time the Depositary for the Securities of a series notifies the Company that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for the Securities of such series shall no longer be eligible under Section 2.01, the Company shall appoint a successor Depositary with respect to the Securities of such series. If a successor Depositary for the Securities of such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company's election pursuant to Section 2.03(i) shall no longer be effective with respect to the Securities of such series and the Company will execute, and the Trustee, upon receipt of, and pursuant to a Company Order will authenticate and deliver Securities of such series in definitive form in an aggregate principal amount equal to the principal amount of the Global Security or Global Securities representing such series in exchange for such Global Security or Global Securities.

The Company may at any time in its sole discretion determine that the Securities of any series issued in the form of one or more Global Securities shall no longer be represented by such Global Security or Global Securities. In such event the Company will execute, and the Trustee, upon receipt of, and pursuant to, a Company Order will authenticate and deliver Securities of such series in definitive form and in aggregate principal amount equal to the principal amount of the Global Security or Global Securities representing such series in exchange for such Global Security or Global Securities.

If specified by the Company pursuant to Section 2.03 with respect to a series of Securities, the Depositary for such series of Securities may surrender a Global Security for such series of Securities in exchange in whole or in part for Securities of such series in definitive form

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on such terms as are acceptable to the Company and such Depositary. Thereupon, the Company shall execute, and the Trustee shall authenticate and deliver, without service charge,

(i) to each person specified by such Depositary a new Security or Securities of the same series, in definitive form, of any authorized denomination as requested by such person in aggregate principal amount equal to and in exchange for such person's beneficial interest in the Global Security; and

(ii) to such Depositary a new Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Securities delivered to holders thereof pursuant to the immediately preceding clause (i) of this Section.

Upon exchange of a Global Security for Securities in definitive form, such Global Security shall be cancelled by the Trustee. Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such Global Security shall instruct the Trustee. The Trustee shall deliver such Securities to the persons in whose names such Securities are so registered.

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

All Securities presented or surrendered for registration of transfer, exchange or payment shall (if so required by the Company or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company and the Trustee, duly executed by the registered holder or by his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Company shall not be required (a) to issue, register the transfer of or exchange Securities of any series for a period of 15 days next preceding any selection of Securities of such series to be redeemed, or (b) to register the transfer of or exchange any Security or portion thereof called or selected for redemption.

**SECTION 2.06. Temporary Securities.** Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall authenticate and deliver temporary Securities of such series (printed, lithographed or typewritten) of any authorized denomination, and substantially in the form of the definitive Securities of such series, but with such omission, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Temporary Securities may be issued without a recital of specific redemption prices and may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be authenticated by the Trustee upon the

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same conditions and in substantially the same manner, and with like effect, as the definitive Securities of such series. Without unnecessary delay the Company will execute and will furnish definitive Securities of each series and thereupon any or all temporary Securities of such series may be surrendered in exchange therefor, at the principal office of the Company, and, subject to Section 2.05 hereof, the Company shall execute and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series of authorized denominations. Until so exchanged, the temporary Securities shall be entitled to the same benefits under this Indenture, and shall be subject to the same provisions hereof (except as provided in this Section), as definitive Securities of such series authenticated and delivered hereunder.

**SECTION 2.07. Mutilated, Destroyed, Lost and Stolen Securities.** In case any temporary or definitive Security shall become mutilated or be destroyed, lost or stolen, the Company in the case of a mutilated Security shall, and in the case of a destroyed, lost or stolen Security in its discretion may, execute, and upon the Company's request the Trustee shall authenticate and deliver, a new Security of the same series and bearing a number not contemporaneously outstanding, in exchange and in substitution for the mutilated Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen. The applicant for a substitute Security shall first furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also first furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof. The Trustee may authenticate any such substitute Security and deliver the same upon the written request or authorization of the Company. Upon the issue of any substitute Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. If any Security that has become, or is about to become, due and payable is mutilated, or is destroyed, lost or stolen, the Company may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as they may require to save each of them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Security and of the ownership thereof.

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

**SECTION 2.08. Cancellation of Surrendered Securities; Destruction Thereof.** All Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer or for credit against any sinking fund payment, shall, if surrendered to the Company or any paying agent, promptly be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be cancelled by it, and no Securities shall be issued in lieu thereof except as

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expressly permitted by any of the provisions of this Indenture. Upon the request of the Company, the Trustee shall deliver to the Company cancelled Securities held by the Trustee, or, in the absence of such request, the Trustee may destroy the same and deliver a certificate of such destruction to the Company. If the Company shall acquire any of the Securities, however, such acquisition shall not operate as a satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation.

SECTION 2.09. Extension of Interest Payment Period. With respect to Securities of any series as to which, pursuant to Section 2.03(m), it has been established that this Section 2.09 applies, subject to such terms as may be established pursuant to Section 2.03(m), the Company may at any time and from time to time, so long as no Event of Default shall have occurred and be continuing with respect to the Securities of any series hereunder, elect to extend interest payment periods or defer the payment of interest on an interest payment date, and such election shall not be an Event of Default with respect to the Securities of any series.

### **ARTICLE THREE**

#### **Redemption of Securities and Sinking Funds**

SECTION 3.01. Applicability of Right of Redemption. Redemption of Securities (other than pursuant to a sinking fund or analogous provision) permitted by the terms of any series of Securities shall be made in accordance with such terms and Sections 3.02 and 3.03; provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

SECTION 3.02. Election to Redeem; Notice of Redemption; Partial Redemption. The election of the Company to redeem any Securities of any series shall be authorized by a Board Resolution and evidenced by an Officers' Certificate. In case the Company shall desire to exercise such right to redeem all, or, as the case may be, any part of the Securities of any series in accordance with the right reserved so to do, it shall give notice of such redemption to holders of the Securities to be redeemed as hereinafter in this Section provided.

Notice of redemption to the holders of Securities to be redeemed as a whole or in part shall be given by mailing of a notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption to the registered holders of Securities to be redeemed in whole or in part at their last addresses as they shall appear upon the Security Register. Such mailing shall be by first-class mail postage prepaid. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the registered holder receives the notice. In any case, the failure to give such notice by mail, or any defect in such notice, to the registered holder of any Security designated for redemption in whole or in part shall not affect the validity of the proceedings for redemption of any other Security.

Each such notice of redemption shall specify the date fixed for redemption and the price at which Securities are to be redeemed, shall state that the conditions precedent to such redemption, if any, have occurred and describe the same, and shall state that payment of the redemption price of the Securities to be redeemed, together with accrued interest thereon to the date fixed for redemption (except that if such redemption date is an interest payment date, the

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interest due on such date with respect to a particular Security shall be payable to the holder of such Security on the record date for such interest payment date), will be made at the office or agency to be maintained by the Company in accordance with Section 4.02 upon presentation and surrender of such Securities and that from and after said date interest thereon will cease to accrue. If less than all the Securities of a series are to be redeemed, the notice to each registered holder of Securities to be redeemed shall identify such registered holder's Securities to be redeemed as a whole or in part. In case any Security is to be redeemed in part only, the notice which relates to such Securities shall state the portion of the principal amount to be redeemed, and that on and after the redemption date, upon surrender of such Security, a new Security or Securities of the same series in principal amount equal to the unredeemed portion thereof will be issued.

To the extent that the Securities of any series have different terms, the Company shall designate the Securities to be redeemed if less than all of the series is to be redeemed. If less than all the Securities of a series having the same terms are to be redeemed, the Company shall give the Trustee, not less than 45 days (or such lesser number of days as the Trustee shall approve) prior to the date fixed by the Company for the redemption of Securities, written notice of the aggregate amount of the Securities to be redeemed, and thereupon the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Securities of such series or portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) thereof to be redeemed, and shall thereafter promptly notify the Company and any paying agent in writing of the Securities of such series or portions thereof to be redeemed.

Any notice of redemption to be mailed by the Company pursuant to this Section may be mailed, at the Company's direction, by the Trustee in the name and at the expense of the Company.

**SECTION 3.03. Payment of Securities Called for Redemption.** If notice of redemption shall have been given in the manner provided in Section 3.02, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption (except that if such redemption date is an interest payment date the interest due on such date shall be payable to the holder of such Security on the record date for such interest payment date), and on and after such date of redemption (unless the Company shall default in the payment of such Securities or portions thereof at the redemption price, together with interest accrued thereon to the date fixed for redemption) interest on the Securities or portions of Securities so called for redemption shall cease to accrue, and such Securities and portions of Securities shall be deemed not to be outstanding hereunder and shall not be entitled to any benefit under this Indenture except to receive payment of the redemption price, together with accrued interest thereon to the date fixed for redemption. On presentation and surrender of such Securities on or after said date at said place of payment in said notice specified, the said Securities or specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together (subject to the right of the holder on the record date if such redemption date is an interest payment date) with interest accrued thereon to the date fixed for redemption.

Upon presentation and surrender of any Security which is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the holder

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thereof, at the expense of the Company, a new Security or Securities of the same series of authorized denominations in principal amount equal to the unredeemed portion of the Security so surrendered.

SECTION 3.04. Applicability of Sinking Fund. Redemption of Securities permitted or required pursuant to a sinking fund for the retirement of Securities of a series by the terms of such series of Securities shall be made in accordance with such terms of such series of Securities and this Article; provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

The minimum amount of any sinking fund payment provided for by the terms of Securities 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 Securities of any series is herein referred to as an "optional sinking fund payment." If provided for by the terms of Securities of any series, the cash amount of any mandatory sinking fund payment may be subject to reduction as provided in Section 3.05.

SECTION 3.05. Satisfaction of Mandatory Sinking Fund Payments with Securities. Subject to Section 3.06, in lieu of making all or any part of any mandatory sinking fund payment with respect to any Securities of a series in cash, the Company may at its option (a) deliver to the Trustee Securities of that series theretofore purchased or otherwise acquired by the Company, or (b) receive credit for the principal amount of Securities of that series which have been previously delivered to the Trustee by the Company or redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Securities for redemption through operation of the sinking fund and the cash amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 3.06. Redemption of Securities for Sinking Funds. Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee a Company Order 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 through delivery and/or crediting of Securities of that series pursuant to Section 3.05 (which Securities will, if not previously delivered, accompany such Company Order) and whether the Company intends to exercise its right to make a permitted optional sinking fund payment with respect to such series. Such Company Order shall be irrevocable, and upon its delivery the Company shall be obligated to make the cash payment or payments therein referred to, if any, prior to such sinking fund payment date. In the case of the failure of the Company to deliver such Company Order, the sinking fund payment due with respect to the next sinking fund payment date for that series of Securities shall be paid entirely in cash and shall be sufficient to redeem the principal amount of such Securities subject to a mandatory sinking fund payment without the option to deliver or credit Securities as provided in Section 3.05 and without the right to make any optional sinking fund payment with respect to such series.

Any sinking fund payment or payments (mandatory or optional) made in cash, plus any unused balance of any preceding sinking fund payments made in cash, which shall equal

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or exceed \$100,000 (or a lesser sum if the Company shall so request) with respect to the Securities of any particular series shall be applied by the Trustee, a paying agent or the Company, if it acts as its own paying agent, on the sinking fund payment date next following the date of such payment to the redemption of such Securities at the redemption price specified in such Securities for operation of the sinking fund, together with accrued interest to the sinking fund payment date. Any sinking fund moneys not so applied or allocated to the redemption of Securities shall be added to the next cash sinking fund payment received by the Trustee, such paying agent or the Company for such series and, together with such payment, shall be applied in accordance with the provisions of this Section. Any and all sinking fund moneys with respect to the Securities of any particular series held by the Trustee, such paying agent or the Company on the last sinking fund payment date with respect to Securities of such series and not held for the payment or redemption of particular Securities shall be applied by the Trustee, such paying agent or the Company, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of principal of such Securities at maturity.

Not more than 60 days and not less than 45 days prior to each sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in accordance with Section 3.02. The Company shall cause notice of the redemption thereof to be given not less than 30 nor more than 60 days prior to the sinking fund payment date in the manner provided in Section 3.02, except that the notice of redemption shall also state that the Securities of such series are being redeemed by operation of the sinking fund and the sinking fund payment date. Such notice having been duly given, the redemption of such Securities shall be made on the sinking fund payment date upon the terms and in the manner stated in Section 3.03.

## ARTICLE FOUR

### Particular Covenants of the Company

SECTION 4.01. Payment of Principal, Premium, if any, and Interest. The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay or cause to be paid the principal of and premium, if any, and interest, if any, on each of the Securities of that series at the times and places and in the manner provided herein and in the Securities of that series.

SECTION 4.02. Office or Agency for Certain Purposes. The Company will maintain an office or agency (or offices or agencies) where the Securities may be presented for registration of transfer and exchange as in this Indenture provided, and where notices and demands to or upon the Company in respect of the Securities or of this Indenture may be served and where the Securities may be presented for payment. The principal office of the Company shall be such office or agency unless the Company shall maintain some other office or agency for such purposes and shall give the Trustee and the registered holders of the Securities written notice of the location thereof.

SECTION 4.03. Maintenance of Corporate Existence. The Company will preserve its corporate existence, but this covenant shall not require the Company to continue its corporate existence in the event of a consolidation or merger of the Company in accordance with

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the provisions of Article Eleven hereof as a result of which the Company shall lose its corporate identity, or in the event of a sale or conveyance of the property of the Company as an entirety or substantially as an entirety in accordance with the provisions of said Article Eleven.

SECTION 4.04. Appointments to Fill Vacancies in Trustee's Office. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 4.05. Provisions as to Paying Agent. (a) If the Company shall act as its own paying agent with respect to any series of Securities, it will, on or before each due date of the principal of or premium, if any, or interest, if any, on the Securities of that series, set aside, segregate and hold in trust for the benefit of the holders of such Securities or of the Trustee, as the case may be, a sum sufficient to pay such principal or premium, if any, or interest so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Company (or by any other obligor on the Securities of that series) to make any payment of the principal of or premium, if any, or interest on the Securities of such series when the same shall be due and payable.

(b) Whenever the Company shall have one or more paying agents, other than the Company, for any series of Securities, it will, on or before each due date of the principal of or premium, if any, or interest, if any, on any Securities of that series, 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 Securities, and (unless such paying agent is the Trustee) the Company will notify the Trustee of such action or the failure to take such action.

(c) If the Company shall appoint a paying agent other than the Trustee or the Company with respect to any series of Securities, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to this Section that such agent will:

(1) hold all sums held by it as such agent for the payment of the principal of or premium, if any, or interest on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the holders of the Securities of such series or of the Trustee, as the case may be;

(2) give the Trustee notice of any default by the Company (or by any other obligor on the Securities of such series) in the making of any payment of the principal of or premium, if any, or interest on the Securities of such series when the same shall be due and payable; and

(3) 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.

(d) Anything in this Section to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by it, or by any

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paying agent hereunder, as required by this Section, such sums to be held by the Trustee upon the trusts herein contained.

(e) Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section is subject to Sections 12.04 and 12.05.

**SECTION 4.06. Annual Officers' Certificate to Trustee.** The Company will deliver to the Trustee prior to November 1 in each year, an Officers' Certificate stating that in the course of the performance by the signers of their duties as officers of the Company they would normally obtain knowledge of any default by the Company in the performance of any covenants contained in Sections 4.03 and 11.02, stating whether or not they have obtained knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

**SECTION 4.07. Reports to Be Furnished Securityholders.** The Company will transmit or cause to be transmitted to the Securityholders, as soon as practicable after the mailing of such material to its stockholders, copies of all annual financial reports distributed to its stockholders generally. Reports pursuant to this Section shall be transmitted by mail to all registered holders of Securities, as the names and addresses of such holders appear upon the Security Register.

**SECTION 4.08. Further Assurances.** From time to time whenever reasonably demanded by the Trustee, the Company will make, execute and deliver or cause to be made, executed and delivered any and all such further and other instruments and assurances as may be reasonably necessary or proper to carry out the intention or facilitate the performance of the terms of this Indenture.

## **ARTICLE FIVE**

### **Securityholders' Lists, Communications to Securityholders, and Reports by the Company and the Trustee**

**SECTION 5.01. Company to Furnish Trustee Information as to Names and Addresses of Securityholders.** The Company shall furnish or cause to be furnished to the Trustee:

(a) on June 15 and December 15 in each year (beginning with June 15, 2001), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of each series of Securities as of a date not more than 15 days prior to the time such list is furnished, and

(b) at such other times as the Trustee may request in writing within 30 days after receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished, provided that, if and so long as the Trustee is the sole Security registrar, no such list need be furnished.

**SECTION 5.02. Preservation of Information; Communications to Securityholders.** (a) The Trustee shall preserve, in as current a form as is reasonably practicable,

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the names and addresses of the holders of each series of Securities received by it in the capacity of Security registrar and the names and addresses of holders of each series of Securities contained in the most recent list furnished to it under Section 5.01. The Trustee may destroy any such list upon receipt of a new list so furnished.

(b) The rights of Securityholders to communicate with other Securityholders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Each and every holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent or other agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Securities made pursuant to the Trust Indenture Act, 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 pursuant to the Trust Indenture Act.

SECTION 5.03. Reports by Company. The Company shall file with the Trustee and the Securities and Exchange Commission, and transmit to Securityholders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; *provided* that any such information, documents or reports required to be filed with said Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, shall be filed with the Trustee within 15 days after the same is so required to be filed with said Commission. Delivery of any information, documents and reports by the Company to the Trustee pursuant to the provisions of this Section 5.03 is for informational purposes only and the Trustee's receipt of same shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 5.04. Reports by Trustee. (a) The Trustee shall transmit to Securityholders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each October 15 following the execution and delivery of this instrument deliver to Securityholders a brief report, dated as of such October 15, which complies with the provisions of such Section 313(a).

(b) The Trustee shall transmit the reports required by Section 313(b) of the Trust Indenture Act in accordance with Section 313(c) of the Trust Indenture Act.

(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which any Securities are listed and also with the Securities and Exchange Commission. If the Company lists the Securities of any series on any stock exchange, it will promptly so notify the Trustee.

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## ARTICLE SIX

### Remedies of the Trustee and Securityholders on Event of Default

SECTION 6.01. Events of Default Defined; Acceleration of Maturity; Waiver of Default. In case one or more of the following shall have occurred and be continuing with respect to the Securities of any series, it shall be an event of default of such series (unless it is specifically deleted in a supplemental indenture or Board Resolution under which such series of Securities is issued or has been modified in any such supplemental indenture), that is to say:

(a) default in the payment of any installment of interest upon any Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days, provided, however, that a valid extension of the interest payment period or deferral of interest payment by the Company as contemplated in Section 2.09 shall not constitute a failure to pay interest for this purpose; or

(b) default in the payment of the principal of or premium, if any, on any Security of such series as and when the same shall become due and payable either at maturity, upon redemption, by declaration or otherwise; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company contained in the Securities of such series or in this Indenture (other than a covenant or agreement which has been expressly included in the Securities or in this Indenture solely for the benefit of a series of Securities other than that series) for a period of 60 days after the date on which written notice of such failure, requiring the Company to remedy the same and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, or to the Company and the Trustee by the holders of a least 25% in aggregate principal amount of the Securities of such series at the time outstanding; or

(d) if a decree or order for relief shall be entered by a court of competent jurisdiction in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law nor or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or of a major part of its property, or ordering the winding up or liquidation of the Company's affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(e) if the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law nor or hereafter in effect, or the Company shall consent to the entry by order of a court of competent jurisdiction of a decree or order in respect of the Company in an involuntary case or proceeding under any applicable bankruptcy, insolvency or other similar law nor or hereafter in effect or to the commencement of any bankruptcy or insolvency proceeding against the Company; or

(f) if the Company shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall

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consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of a major part of its property; or

(g) the occurrence of any other Event of Default with respect to Securities of such series as provided in a supplemental indenture applicable to such series of Securities pursuant to Section 10.01(d);

then and in each and every such case, unless the principal of the Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Securities of such series then outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the principal of all the Securities of such series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding. Payment of principal and interest on such Securities shall remain subordinated to the extent provided in Article Fourteen, notwithstanding that such amount shall become immediately due and payable as herein provided. This provision, however, is subject to the condition that if, at any time after the principal of the Securities of such series shall have been so declared due and payable, and before any sale of property under any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series and the principal of and premium, if any, on any and all Securities of such series which shall have become due otherwise than by declaration (with interest on overdue installments of interest, to the extent legally enforceable under applicable law, and on such principal of and premium, if any, on each Security of such series at the rate borne by such Security to the date of such payment or deposit) and the expenses of the Trustee, and reasonable compensation to the Trustee, its agents, attorneys and counsel, and any and all defaults under this Indenture, other than the nonpayment of principal on Securities of such series which shall have become due by declaration, shall have been remedied -- then, and in every such case the holders of a majority in aggregate principal amount of the Securities of such series then outstanding, by written notice to the Company and to the Trustee, may on behalf of the holders of all of the Securities of such series waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

The Company and the Trustee may, to the extent provided in Section 10.01, enter into one or more indentures supplemental hereto with respect to any series of the Securities which may provide for additional, different or fewer Events of Default with respect to such series of Securities.

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SECTION 6.02. Collection of Indebtedness by Trustee; Trustee May Prove Debt. The Company covenants that (1) in case default shall be made in the payment of any installment of interest on any of the Securities, as and when the same shall become due and payable, and such default shall have continued for a period of 30 days, or (2) in case default shall be made in the payment of the principal of or premium, if any, on any of the Securities when and as the same shall have become due and payable, whether upon maturity of the Securities or upon redemption or upon declaration or otherwise -- then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of holders of such Securities, the whole amount that then shall have become due and payable on such Securities for principal and premium, if any, and interest, with interest upon the overdue principal and premium, if any, of each such Security and (to the extent legally enforceable under applicable law) upon installments of interest, at the rate borne by such Security; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its negligence or bad faith.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity against the Company or other obligor on such Securities for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or such other obligor upon such Securities and collect in the manner provided by law out of the property of the Company or such other obligor upon such Securities, wherever situated, the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor upon the Securities of any series under Title 11 of the United States Code or any other applicable Federal or state bankruptcy, insolvency or other similar law relative to the Company or such other obligor, its creditors or its property, or in case a receiver or trustee shall have been appointed for its property or in case of any other judicial proceedings relative to the Company or other obligor upon the Securities of any series, its creditors or its property, the Trustee, irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed, upon redemption or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Securities of any series, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Securityholders of any series allowed in any judicial proceeding relative to the Company or other obligor upon the Securities of any series, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Securityholders 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 Securityholders, to pay to the Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

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All rights of action and of asserting claims under this Indenture, or under any of the Securities of any series, may be enforced by the Trustee without the possession of any of the Securities of such series, or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Securities of such series. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the holders of the Securities of a series, and it shall not be necessary to make any holders of the Securities of such series parties to any such proceedings.

In case of an Event of Default hereunder with respect to Securities of a particular series, the Trustee may, but unless first requested so to do by the holders of at least a majority in aggregate principal amount of the Securities of such series at the time outstanding and furnished with reasonable indemnity against all costs, expenses and liabilities shall not (subject to the provisions of Section 7.01) be under any obligation to, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceedings in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of the holder of any Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder of any Security in any such proceeding.

**SECTION 6.03. Application of Proceeds.** Any moneys collected by the Trustee with respect to a series of Securities pursuant to Section 6.02 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys:

**FIRST:** To the payment of all costs and expenses in connection with the collection of such moneys, and all amounts payable to the Trustee under Section 7.06;

**SECOND:** To the payment of all Senior Indebtedness of the Company if and to the extent required by Article Fourteen;

**THIRD:** To the payment of the entire amounts then due and unpaid upon the Securities in respect of which or for the benefit of which such moneys shall have been collected, without any preference or priority, ratably according to the amounts due and payable upon such Securities upon presentation of the several Securities and notation of such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Any surplus then remaining shall be paid to the Company or to such other person as shall be entitled to receive it.

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SECTION 6.04. Limitations on Suits by Securityholders. No holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof with respect to the Securities of that series, and unless also the holders of not less than 25% in aggregate principal amount of the Securities of that series then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.06, it being understood and intended, and being expressly covenanted by the holder of every Security of such series with every other holder of Securities of such series and the Trustee, that no one or more holders of Securities of such series shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Securities or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Securities of such series. For the protection and enforcement of this Section, each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture, but subject to Article Fourteen, the right of any holder of any Security to receive payment of the principal of and premium, if any, and interest on such Security, on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder.

SECTION 6.05. Powers and Remedies Cumulative; Delay or Omission Not Waiver. All powers and remedies given by this Article to the Trustee or to the holders of Securities of any series shall, to the extent permitted by law and subject to Section 6.04, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or such Securityholders by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this indenture, and no delay or omission of the Trustee or of any holder of the Securities of any series to exercise any right or power accruing upon any default occurring and continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to Section 6.04, every power and remedy given by this Article or by law to the Trustee or to such Securityholders may be exercised from time to time, and as often as shall be deemed expedient by the Trustee or by such Securityholders.

SECTION 6.06. Control by Securityholders; Waiver of Default. The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to Securities of such series; provided, however, that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture; and provided further, that nothing in this Indenture shall impair the right of the Trustee to take any action deemed proper

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by the Trustee and which is not inconsistent with such direction by such Securityholders. The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding may on behalf of the holders of all of the Securities of such series waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to the Securities of such series and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series. In the case of any such waiver, the Company, the Trustee and the holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**SECTION 6.07. Trustee to Give Notice of Defaults Known to It, but May Withhold in Certain Circumstances.** The Trustee shall, within 90 days after the occurrence of a default with respect to the Securities of any series, give to the Securityholders of such series, in the manner and to the extent required to do so by the Trust Indenture Act, notice of all defaults known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in Sections 6.01(a), (b), (c), (d), (e), (f) and (g) with respect to Securities of such series not including periods of grace, if any, provided for therein and irrespective of the giving of them written notice specified in subparagraph (c) of Section 6.01); provided, however, that in case of any default of the character specified in subparagraph (c) of Section 6.01 no such notice shall be given until at least sixty (60) days after the occurrence thereof; and provided further, that, except in the case of default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series, 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 Securityholders of such series.

**SECTION 6.08. Right of Court to Require Filing of Undertaking to Pay Costs.** All parties to this Indenture agree, and each holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount of the Securities of any series outstanding, or to any suit instituted by any Securityholder of any series for the enforcement of the payment of the principal of or premium, if any, or interest on any Security of such series, on or after the due dates expressed in such Security.

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## ARTICLE SEVEN

### Concerning the Trustee

SECTION 7.01. Duties and Responsibilities of Trustee. With respect to the holders of any series of Securities issued hereunder, the Trustee, prior to the occurrence of an Event of Default with respect to the Securities of that series and after the curing or waiving of all Events of Default which may have occurred with respect to such series, 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. In case an Event of Default with respect to Securities of any series has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture with respect to such series 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.

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:

(a) prior to the occurrence of an Event of Default with respect to the Securities of any series and after the curing or waiving of all such Events of Default with respect to such series which may have occurred:

(1) the duties and obligations of the Trustee with respect to the Securities of that series shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

(b) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer or officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) 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 registered holders given as provided in Section 6.06 relating to the time, method and place of conducting

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any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it.

SECTION 7.02. Certain Rights of Trustee. Except as otherwise provided in Section 7.01:

(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 Security, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced to the Trustee by a Company Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors shall be sufficiently evidenced to the Trustee by a Board Resolution;

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

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders, pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred by the Trustee in complying with such request, order or direction;

(e) whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture in good faith and in reliance thereon;

(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, approval, appraisal, bond, debenture Securityholder, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be

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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 by it with due care hereunder;

(h) the Trustee shall not be charged with knowledge of any Event of Default with respect to the Securities of any series for which it is acting as Trustee unless either (1) a Responsible Officer of the Trustee shall have actual knowledge of the Event of Default or (2) written notice of such Event of Default shall have been given to the Trustee by the Company, any other obligor on such Securities or by any holder of such Securities; and

(i) the rights, privileges, protections, immunities and benefits given to the Trustee hereunder, including, without limitation, its rights to compensation, reimbursement and indemnification under Section 7.06, are hereby extended and also made applicable to, and shall be enforceable by, the Trustee in each of its other capacities hereunder.

SECTION 7.03. Trustee Not Responsible for Recitals, etc. The recitals contained herein and in the Securities, except the Trustee's certificate of authentication and the representation as to the power of the Trustee to enter into this Indenture and accept and execute the trusts hereby created, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds of such Securities.

SECTION 7.04. Trustee and Others May Hold Securities. Subject to Sections 7.07 and 7.12, the Trustee or any paying agent or Security registrar or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or other obligor on the Securities with the same rights it would have if it were not Trustee, paying agent, Security registrar or such other agent.

SECTION 7.05. Moneys Held by Trustee or Paying Agent. Subject to Sections 12.04 and 12.05, all moneys received by the Trustee or any paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but any paying agent that is a bank need not segregate such moneys from other funds except to the extent required by law and shall not be invested. Neither the Trustee nor any paying agent shall be under any liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon. So long as no Event of Default with respect to Securities of any series, other than an Event of Default under subparagraph (c) of Section 6.01, shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the written order of the Company, signed by its President, or any Vice President or its Treasurer or an Assistant Treasurer.

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SECTION 7.06. Compensation of Trustee and Its Lien. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as herein otherwise expressly provided, the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. If any property other than cash shall at any time be subject to the lien of this Indenture, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such lien, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other prior liens or encumbrances thereon. The Company also covenants and agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in the premises. The obligations of the Company under this Section shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Securities. "Trustee" for purposes of this Section shall include (i) the Trustee in each of its other capacities hereunder and (ii) any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any bankruptcy law.

The provisions of this Section 7.06 shall survive the termination for any reason of this Indenture.

SECTION 7.07. Disqualification; Conflicting Interests. If the Trustee shall have or acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such conflicting interest or resign to the extent, in the manner and with the effect, and subject to the conditions, provided in the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee (i) under this Indenture with respect to Securities of more than one series. Nothing herein shall prevent the Trustee from filing with the Securities and Exchange Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

SECTION 7.08. Persons Eligible for Appointment as Trustee. The Trustee hereunder shall at all times be a corporation organized and doing business under the laws of the United States or any State or territory thereof or of the District of Columbia authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal, state, territorial, or District of

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Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of the aforesaid 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. In case at any time the Trustee shall cease to be eligible in accordance with this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09.

**SECTION 7.09. Resignation and Removal of Trustee; Appointment of Successor.** (a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to any one or more or all series of Securities by giving written notice to the Company and by mailing notice of such resignation, to the holders of Securities of that or those series at their last addresses as they shall appear on the Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees with respect to the applicable series by written instrument executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed with respect to a particular series and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide holder of a Security or Securities of the applicable series for at least 6 months may, subject to Section 6.08, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) If at any time:

(1) the Trustee shall fail to comply with Section 7.07(a) after written request therefor by the Company or by any Securityholder who has been a bona fide holder of a Security or Securities for at least 6 months, or

(2) the Trustee shall cease to be eligible under Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Securityholder, or

(3) the Trustee shall become incapable of acting, or shall be adjudged 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, the Company may remove the Trustee with respect to the applicable series of Securities, and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the trustee so removed and one copy to the successor trustee, or, subject to Section 6.08, any Securityholder who has been a bona fide holder of a Security or Securities of any such series for at least 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 with respect to such series. Such court may thereupon after such notice, if any, as it may deem

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proper and prescribe, remove the Trustee and appoint a successor trustee with respect to such series.

(c) The holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding may at any time remove the Trustee with respect to that series and appoint with respect to such series a successor trustee by delivering to the trustee so removed, to the successor trustee so appointed and to the Company, the evidence provided for in Section 8.01 of the action taken by the Securityholders.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

**SECTION 7.10. Acceptance of Appointment by Successor Trustee.** Any successor trustee appointed under Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee with respect to any or all applicable series an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights, powers and trusts with respect to such series of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to Section 7.06.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

No successor Trustee with respect to any series of Securities shall accept appointment as provided in this Section unless at the time of such acceptance such successor Trustee shall with respect to such series be qualified under Section 7.07 and eligible under Section 7.08.

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Upon acceptance of appointment by a successor Trustee with respect to the Securities of any series, the Company shall mail notice of the succession of such Trustee hereunder to the holders of Securities of such series at their last addresses as they shall appear on the Security Register. If the Company fails to mail such notice within 10 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

**SECTION 7.11. Merger, Conversion or Consolidation of Trustee.** Any person into which the Trustee may be merged or converted or with which it may be consolidated, or any person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

**SECTION 7.12. Preferential Collection of Claims Against Company.** If the Trustee shall be or become a creditor of the Company or any other obligor upon the Securities (other than by reason of a relationship described in Section 311(b) of the Trust Indenture Act), the Trustee shall be subject to any and all applicable provisions of the Trust Indenture Act regarding the collection of claims against the Company or such other obligor. For purposes of Section 311(b) of the Trust Indenture Act:

(a) The term "cash transaction" shall mean any transaction in which full payment for goods or securities sold is made within 7 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.

(b) The term "self-liquidating paper" shall mean 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, manufacture, 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.

## **ARTICLE EIGHT**

### **Concerning the Securityholders**

**SECTION 8.01. Evidence of Action Taken by Securityholders.** Whenever in this Indenture it is provided that the holders of a specified percentage or a majority in aggregate principal amount of the Securities or of any series of Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the holders of such specified

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percentage or majority have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Securityholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Securities voting in favor thereof at any meeting of Securityholders duly called and held in accordance with the provisions of Article Nine, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Securityholders.

**SECTION 8.02. Proof of Execution of Instruments and of Holding of Securities.** Subject to the provisions of Sections 7.01, 7.02 and 9.05, proof of the execution of any instrument by a Securityholder or his agent or proxy and proof of the holding by any person of any of the Securities shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in any State within the United States, that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and the date of the execution of any such instrument may also be proved in any other manner which the Trustee may deem sufficient.

The ownership of Securities may be proved by the Security Register or by a certificate of the Security registrar.

The Trustee may require such additional proof, if any, of any material referred to in this Section as it shall deem necessary.

The record of any Securityholders' meeting shall be proved as provided in Section 9.06.

**SECTION 8.03. Registered Holders of Securities May Be Treated as Owners.** The Company, the Trustee, any paying agent, and any Security registrar may deem and treat the person in whose name any Security shall be registered upon the Security Register as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Security registrar) for the purpose of receiving payment thereof or on account thereof and of interest thereon as herein provided and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Security registrar shall be affected by any notice to the contrary. All such payments so made to any such registered holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

**SECTION 8.04. Securities Owned by Company Deemed Not Outstanding.** In determining whether the holders of the requisite aggregate principal amount of Securities have concurred in any direction, consent or waiver under this Indenture, Securities which are owned by the Company or any other obligor on the Securities or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities shall be disregarded and deemed not to be outstanding for the

purpose of any such determination, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section, if the pledgee shall establish to the satisfaction of the Trustee that the pledgee has the right to vote such Securities and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. Subject to the provisions of Section 7.01, in case of a dispute as to such right, any decision by the Trustee, taken upon the advice of counsel, shall be full protection to the Trustee.

SECTION 8.05. Right of Revocation of Action Taken. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Securities or of any series of Securities specified in this Indenture in connection with such action, any holder of a Security the serial number of which is shown by the evidence to be included in the Securities the holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid, any such action taken by the holder of any Security shall be conclusive and binding upon such holder and upon all future holders and owners of such Security, and of any Security issued in exchange therefor or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Security or any Security issued in exchange therefor or in place thereof. Any action taken by the holders of the percentage in aggregate principal amount of the Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Securities.

## **ARTICLE NINE**

### **Securityholders' Meetings**

SECTION 9.01. Purposes for Which Securityholders' Meetings May Be Called. A meeting of Securityholders may be called at any time and from time to time pursuant to this Article for any of the following purposes:

- (1) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to waive or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to Article Six;
- (2) to remove the Trustee and appoint a successor trustee pursuant to Article Seven;
- (3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to Section 10.02; or

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(4) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Securities under any other provision of this Indenture or under applicable law.

SECTION 9.02. Call of Meetings by Trustee. The Trustee may at any time call a meeting of Securityholders of any series to be held at any such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine. Notice of every meeting of Securityholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by the Trustee, first-class postage prepaid, not less than 20 nor more than 180 days prior to the date fixed for the meeting, to the holders of Securities of such series at their last addresses as they shall appear upon the Security Register.

SECTION 9.03. Company and Securityholders May Call Meeting. In case the Company, pursuant to a resolution of its Board of Directors, or the holders of at least 10% in aggregate principal amount of the Securities of any series then outstanding, shall have requested the Trustee to call a meeting of Securityholders of such series, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the mailing of the notice of such meeting within 20 days after receipt of such request, then the Company or the holders of such Securities in the amount above specified may determine the time and the place in said Borough of Manhattan for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

SECTION 9.04. Persons Entitled to Vote at Meeting. To be entitled to vote at any meeting of Securityholders of a series a person shall be (a) a registered holder of one or more Securities of such series or (b) a person appointed by an instrument in writing as proxy for the holder or holders of such Securities by a registered holder of one or more such Securities. The only persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.05. Determination of Voting Rights; Conduct and Adjournment of Meeting. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 8.02 or other proof. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 8.02 and the appointment of any proxy shall be proved in the manner specified in said Section 8.02 or by having the signature of the person executing the proxy witnessed or guaranteed by any bank, banker, trust company or firm satisfactory to the Trustee.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 9.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman

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and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 8.04, at any meeting any Securityholder of a series or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities of such series held or represented by him (in the case of Original Issue Discount Securities, such principal amount is the amount that would be due and payable upon the acceleration of the maturity thereof pursuant to Section 6.01) provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities of such series held by him or instruments in writing as aforesaid duly designating him as the person to vote on behalf of other Securityholders of such series. Any meeting of Securityholders duly called pursuant to Section 9.02 or 9.03 may be adjourned from time to time, and the meeting may be held as so adjourned without further notice.

At any meeting, the presence of persons holding or representing Securities in an aggregate principal amount sufficient to take action upon the business for the transaction of which such meeting was called shall be necessary to constitute a quorum; but, if less than a quorum be present, the persons holding or representing a majority of the Securities represented at the meeting may adjourn such meeting with the same effect, for all intents and purposes, as though a quorum had been present.

**SECTION 9.06. Counting Vote and Recording Action of Meeting.** The vote upon any resolution submitted to any meeting of Securityholders of a series shall be by written ballots on which shall be subscribed the signatures of the holders of Securities of such series or of their representatives by proxy and the serial number or numbers of the Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Sections 9.02 and 9.03. The record shall show the serial numbers of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

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## ARTICLE TEN

### Supplemental Indentures

**SECTION 10.01. Supplemental Indentures Without Consent of Securityholders.** Without the consent of any holders of the Securities, the Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as it shall be in force at the date of execution of such indenture or indentures) for one or more of the following purposes:

- (a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the Successor of the covenants, agreements and obligations of the Company pursuant to Article Eleven;
- (b) to add to the covenants and agreements of the Company such further covenants, agreements, restrictions or conditions for the protection of the holders of the Securities of all or any series as its Board of Directors and the Trustee shall consider to be for the protection of the holders of Securities of such series (and if such covenants, agreements, restrictions or conditions are to be for the benefit of less than all series of Securities, stating that such covenants, agreements, restrictions or conditions are expressly being included for the benefit of such series), and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, agreements, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, agreement, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the holders of Securities to waive such default;
- (c) to add, delete or modify any Events of Default with respect to all or any series of the Securities, the form and terms of which are being established pursuant to such supplemental indenture as permitted in Sections 2.01, 2.02 and 2.03 (and, if any such event of default is applicable to fewer than all such series of the Securities, specifying the series to which such event of default is applicable), and to specify the rights and remedies of the Trustee and the holders of such Securities in connection therewith;
- (d) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provisions contained herein or in any supplemental indenture, or to make any other addition, modification or elimination as shall not be inconsistent with the provisions of this Indenture or any supplemental indenture and shall not adversely affect the interests of the holders of the Securities;



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(e) to establish the form and terms of the Securities of any series as permitted in Sections 2.01, 2.02 and 2.03, or to authorize the issuance of additional Securities of a series previously authorized or to add to the conditions, limitations or restrictions on the authorized amount, terms of purposes of issue, authentication or delivery of the Securities of any series, as herein set forth, or other conditions, limitations or restrictions thereafter to be observed; and

(f) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, pursuant to the requirements of Section 7.10.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section shall be executed by the Company and the Trustee and shall not require the consent of the holders of any of the Securities at the time outstanding, notwithstanding Section 10.02.

SECTION 10.02. Supplemental Indentures With Consent of Securityholders.

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Securities of any series at the time outstanding, the Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as it shall be in force at the date of execution of such indenture or indentures) for the purpose, with respect to Securities of such series, of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Securities of such series; provided, however, that no such supplemental indenture shall (i) extend the fixed maturity, or the earlier optional date of maturity, if any, of any Security, or reduce the principal amount thereof or the premium thereon, if any, or reduce the rate, or make the principal thereof or premium, if any, or interest thereon payable in any coin or currency other than that provided in such Security without the consent of the holder of each Security so affected, or (ii) reduce the principal amount of Securities of any series, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of all Securities of such series then outstanding.

Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Securityholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture.

A supplemental indenture which changes or eliminates any provision of this Indenture or of any series of Securities which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of holders of Securities of such series with respect to such provision, shall be deemed not to affect the rights under this Indenture of the holders of Securities of any other series.

It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture under this Section, the Company shall mail a notice, setting forth in general terms the substance of such supplemental indenture, to the holders of Securities at their last addresses as they shall appear on the Security Register. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 10.03. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture pursuant to the provisions of this Article, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 10.04. Notation on Securities in Respect of Supplemental Indentures. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article or after any action taken at a Securityholders' meeting pursuant to the provisions of Article Nine may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture or as to any such action. If the Company and the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Company and the Trustee, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities of such series then outstanding.

SECTION 10.05. Opinion of Counsel to Be Given Trustee. The Trustee, subject to Sections 7.01 and 7.02, may receive an Opinion of Counsel as conclusive evidence that any such supplemental indenture is authorized by the terms of this Indenture and that it is proper for the Trustee under the provisions of this Article to join in the execution thereof.

## ARTICLE ELEVEN

### Consolidation, Merger and Sale

SECTION 11.01. Company May Consolidate or Merge, etc. Subject to the provisions of Section 11.02, nothing contained in this Indenture shall prevent any consolidation of the Company with or the merger of the Company into any other corporation, or any merger of any other corporation into the Company, or successive consolidations or mergers to which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, transfer or lease of the properties of the Company as an entirety or substantially as an entirety to any other corporation lawfully entitled to acquire the same.

SECTION 11.02. Conditions to Consolidation or Merger, etc. The Company covenants and agrees that it will not consolidate with or merge into any other corporation, or sell, transfer or lease its properties as an entirety or substantially as an entirety to any person unless, and the Company covenants and agrees that any such consolidation, merger, sale, transfer or lease shall be upon the conditions that (i) the successor corporation formed by or surviving any such consolidation or merger or the person to which such sale, transfer or lease shall have been made (the "Successor") shall be a corporation organized and existing under the laws of the United States of America or a state thereof, (ii) the due and punctual payment of the principal of and premium, if any, and interest on the Securities according to their tenor, and the due and punctual performance and observance of all the terms, covenants and conditions of this Indenture, the Securities and all indentures supplemental hereto to be performed or observed by the Company shall, by an indenture supplemental hereto, executed and delivered to the Trustee, be expressly assumed by the Successor, as fully and effectually as if such Successor had been an original party hereto, and (iii) immediately after such merger, consolidation, sale, transfer or lease, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing.

The Successor, other than a Successor by reason of a lease of the Company's properties, upon executing such indenture supplemental hereto, in form satisfactory to the Trustee, shall succeed to and be substituted for the Company with the same effect as if it had been an original party hereto, thus relieving the Company of all liabilities hereunder and under the Securities, and the Successor shall possess and from time to time may exercise each and every power hereunder of the Company, and may execute and deliver Securities hereunder, either in the name of the Company or the Successor, and any act or proceeding required by this Indenture to be done or performed by any board or officer of the Company may be done or performed with like force and effect by the like board or officer of the Successor.

SECTION 11.03. Documents and Opinion to Be Furnished to the Trustee. The Company covenants and agrees that if it shall consolidate with or merge into any other corporation or if it shall sell, transfer or lease its properties, as an entirety or substantially as an entirety, the Company will promptly furnish to the Trustee:

- (1) A certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the

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Successor stating that the covenants of the Company contained in Section 11.02 have been complied with;

(2) An executed counterpart of any instrument or instruments executed by the Company or the Successor in the performance of such covenants; and

(3) An Opinion of Counsel stating that in the opinion of such counsel such covenants have been complied with and that any instrument or instruments executed by the Company or the Successor in the performance of such covenants comply with the requirements of such covenants.

Each certificate, instrument and opinion furnished to the Trustee pursuant to the provisions of this Section shall conform to the requirements of Section 15.06.

Subject to the provisions of Sections 7.01 and 7.02, the Trustee may receive an Opinion of Counsel conforming to the requirements of Section 15.06 as conclusive evidence that any such consolidation, merger, sale, transfer or lease, any such assumption and any such supplemental indenture or other instrument or instruments comply with the provisions of this Article.

## ARTICLE TWELVE

### **Satisfaction and Discharge of Indenture; Defeasance; Unclaimed Moneys**

SECTION 12.01. Satisfaction and Discharge of Indenture. If (a) the Company shall deliver to the Trustee for cancellation all outstanding Securities, or (b) all outstanding Securities not delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption and the Company shall deposit with the Trustee as trust funds the entire amount sufficient to pay at maturity or upon redemption all such Securities not delivered to the Trustee for cancellation, including principal and premium, if any, and interest due or to become due to such date of maturity or redemption, and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect, and the Trustee, on demand of the Company and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee without negligence or bad faith in connection with this Indenture or the Securities.

SECTION 12.02. Defeasance. Provided that the same has been duly authorized with respect to Securities of a particular series pursuant to Section 2.03(1), if, at any time after the date hereof, the Company shall deposit with the Trustee, in trust for the benefit of the holders thereof, (i) funds sufficient to pay, or (ii) such amount of direct noncallable obligations of, or noncallable obligations the payment of principal of and interest on which is fully guaranteed by, the United States of America, or to the payment of which obligations or guarantees the full faith

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and credit of the United States of America is pledged, as will, or will together with the income thereon without consideration of any reinvestment thereof, be sufficient to pay all sums due for principal of, premium, if any, and interest on the Securities of such series, as they shall become due from time to time, and shall pay all costs, charges and expenses incurred or to be incurred by the Trustee in relation thereto or in carrying out the provisions of this Indenture, this Indenture shall cease to be of further effect with respect to Securities of such series (except as to (i) rights of registration of transfer, substitution and exchange of Securities of such series, (ii) rights of holders to receive payments of, principal of, premium, if any, and interest on the Securities of such series as they shall become due from time to time and other rights, duties and obligations of Securityholders as beneficiaries hereof with respect to the amounts so deposited with the Trustee, and (iii) the rights, obligations and immunities of the Trustee hereunder (for which purposes the Securities of such series shall be deemed outstanding)), and the Trustee, on the written request of the Company, accompanied by the Officers' Certificate and Opinion of Counsel required by Section 15.06, shall execute and deliver to the Company such instruments as shall be requisite to evidence the satisfaction thereof with respect to Securities of such series.

**SECTION 12.03. Application by Trustee of Funds Deposited for Payment of Securities.** All moneys deposited with the Trustee pursuant to Sections 12.01 and 12.02, or received by the Trustee in respect of obligations deposited with the Trustee pursuant to Section 12.02 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the holders of the particular Securities, for the payment of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest.

**SECTION 12.04. Repayment of Moneys Held by Paying Agent.** In connection with the satisfaction and discharge of this Indenture all moneys then held by any paying agent, other than the Trustee, under this Indenture shall, upon and in accordance with demand of the Company, be paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

**SECTION 12.05. Return of Unclaimed Moneys.** Any moneys deposited with the Trustee or any paying agent not applied but remaining unclaimed by the holders of Securities for 2 years after the date upon which the principal of and premium, if any, or interest on such Securities shall have become due and payable shall be repaid to the Company by the Trustee or such paying agent on written demand; and the holder of any of the Securities entitled to receive such payment shall thereafter look only to the Company for the payment thereof and all liability of the Trustee or any such paying agent with respect to such moneys shall thereupon cease. In the absence of any such Company Order, the Trustee or any such paying agent shall from time to time deliver such unclaimed funds to, or as directed by, the pertinent escheat authority, as identified by the Trustee or such paying agent in its sole discretion, pursuant to and in accordance with applicable unclaimed property laws, rules or regulations. Any such delivery shall be in accordance with the customary practices and procedures of the Trustee or such paying agent and the escheat authority and, upon any such delivery, all liability of the Trustee and such paying agent with respect to such unclaimed funds shall thereupon cease.

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## **ARTICLE THIRTEEN**

### **Immunity of Incorporators, Stockholders, Officers and Directors**

SECTION 13.01. Personal Immunity from Liability of Incorporators, Stockholders, etc. No recourse under or upon any obligation, covenant or agreement of this Indenture or any indenture supplemental hereto, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator or against any past, present or future stockholder, officer or member of the Board of Directors, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability and any and all such claims being hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Securities.

## **ARTICLE FOURTEEN**

### **Subordination**

SECTION 14.01. Securities Subordinated to Senior Indebtedness. With respect to Securities of any series as to which, pursuant to Section 2.03(n), it has been established that this Article Fourteen applies (herein called the "Subordinated Securities"), the Company covenants and agrees, and each holder of Subordinated Securities, by his acceptance thereof, likewise covenants and agrees, that the indebtedness represented by the Subordinated Securities and the payment of the principal of, premium, if any, and interest on each and all of the Subordinated Securities are hereby expressly subordinate and junior to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Indebtedness. "Senior Indebtedness" means all indebtedness of the Company for the repayment of money borrowed (whether or not represented by bonds, debentures, notes or other securities) other than the indebtedness evidenced by the Subordinated Securities and any indebtedness subordinated to, or subordinated on parity with, the Subordinated Securities. "Senior Indebtedness" does not include customer deposits or other amounts securing obligations of others to the Company.

SECTION 14.02. Events of Subordination. In the event (a) of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, except a distribution in connection with a consolidation, merger or sale, transfer or lease of the properties of the Company which complies with the requirements of Section 11.02, or (b) of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness, or in the event that the maturity of any Senior Indebtedness has been accelerated because of a default, and such default shall not have been rescinded, then:

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(1) in the circumstance described in the foregoing clause (a) the holders of all Senior Indebtedness, and in the circumstance described in the foregoing clause (b) the holders of all Senior Indebtedness outstanding at the time the principal of such Senior Indebtedness shall have been so declared due and payable, shall first be entitled to receive payment of the full amount due thereon in respect of principal, premium, if any, and interest, or provision shall be made for such amount in money or money's worth, before the holders of any of the Subordinated Securities are entitled to receive any payment on account of the principal of, premium, if any, or interest on the indebtedness evidenced by the Subordinated Securities;

(2) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the Subordinated Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of the Senior Indebtedness are not altered by such reorganization or readjustment), to which the holders of any of the Subordinated Securities or the Trustee would be entitled except for the provisions of this Article shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness, before any payment or distribution is made to the holders of the indebtedness evidenced by the Subordinated Securities or to the Trustee under this Indenture; and

(3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the Subordinated Securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of Senior Indebtedness are not altered by such reorganization or readjustment), shall be received by the Trustee or the holders of any of the Subordinated Securities before all Senior Indebtedness is paid in full, such payment or distribution shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent

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payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

SECTION 14.03. Subrogation. Subject to the payment in full of all Senior Indebtedness, the rights of the holders of the Subordinated Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distribution of cash, property or securities of the Company applicable to such Senior Indebtedness until all amounts owing on the Subordinated Securities shall be paid in full, and, as among the Company, its creditors other than holders of such Senior Indebtedness, and the holders of the Subordinated Securities, no such payment or distribution made to the holders of Senior Indebtedness by virtue of this article which otherwise would have been made to the holders of the Subordinated Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the holders of the Subordinated Securities, on the one hand, and the holders of Senior Indebtedness, on the other hand.

SECTION 14.04. Obligation of Company Unconditional. Nothing contained in this Article or elsewhere in this Indenture or in the Subordinated Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness, and the holders of the Subordinated Securities the obligation of the Company, which is absolute and unconditional to pay to the holders of the Subordinated Securities the principal of, premium, if any, and interest on the Subordinated Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the holder of any Subordinated Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the holders of the Subordinated Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other Person making any payment or distribution, delivered to the Trustee or to the holders of the Subordinated Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article. In the event that the Trustee determines, in good faith, that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Section, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, as to the extent to which such Person is entitled to participate in such payment or distribution, and as to other facts pertinent to the right of such Person under this Section, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.



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SECTION 14.05. Payments on Subordinated Securities Permitted. Nothing contained in this Article or elsewhere in this Indenture, or in any of the Subordinated Securities, shall affect the obligation of the Company to make, or prevent the Company from making, payments of the principal of, premium, if any, or interest on the Subordinated Securities in accordance with the provision hereof and thereof, or shall prevent the Trustee or any paying agent of the Company from applying any moneys deposited with it hereunder to the payment of the principal of, premium, if any, or interest on the Subordinated Securities, in each case except as otherwise provided in this Article.

SECTION 14.06. Effectuation of Subordination by Trustee. Each holder of Subordinated Securities, by his acceptance thereof, authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.07. Knowledge of Trustee. Notwithstanding the provisions of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Trustee, or the taking of any other action by the Trustee (and shall not be liable for making such payment or taking such action), unless and until a responsible officer of the Trustee having responsibility for the administration of the trust established by this Indenture shall have received written notice thereof from the Company, any holder of Subordinated Securities, any paying agent of the Company or any holder or representative of any class of Senior Indebtedness, and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such facts exist; provided that, if prior to the third Business Day preceding the date upon which by the terms hereof any monies become payable for any purpose (including, without limitation, the payment of either the principal of or interest on any Subordinated Security), or the date of the execution of an instrument pursuant to Section 12.02 acknowledging satisfaction and discharge of this Indenture, a responsible officer of the Trustee shall not have received with respect to such monies or to such funds or obligations deposited pursuant to Section 12.02, the notice provided for in this Section 14.07, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies or such funds or obligations and apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary which may be received by it on or after such date.

SECTION 14.08. Trustee's Relation to Senior Indebtedness. The Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 7.12 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder. Nothing in this Article shall apply to claims of or payments to the Trustee under or pursuant to Section 7.06.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and the Trustee shall not be liable to any holder of Senior Indebtedness, if it shall mistakenly pay over or deliver to

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holders of Subordinated Securities, the Company or any other Person monies or assets to which any holder of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

SECTION 14.09. Rights of Holders of Senior Indebtedness Not Impaired. No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

## ARTICLE FIFTEEN

### Miscellaneous Provisions

SECTION 15.01. Successors. All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 15.02. Benefits of Indenture Restricted to Parties and Securityholders. Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, other than the Company, the Trustee and the Securityholders, any legal or equitable right, remedy or claim under or in respect of this Indenture.

SECTION 15.03. Payments Due on Sundays and Holidays. In any case where the date of maturity of principal of or interest on any Securities or the date fixed for redemption of any Securities shall be a Sunday or legal holiday or a day on which banking institutions in the City of New York are authorized by law to close, unless otherwise provided in a supplemental indenture relating to a series of Securities, payment of interest or principal and premium, if any, may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption and no interest shall accrue for the period after such date.

SECTION 15.04. Notices and Demands on Company and Trustee. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Securities on the Company shall be in writing and shall be deemed to have been sufficiently given or served, for all purposes, if given or served at, or sent by registered mail to, the principal office of the Company (until another address is filed in writing by the Company with the Trustee). Any notice, direction, request or demand by any Securityholder to or upon the Trustee shall be in writing and shall be deemed to have been sufficiently given or made, for all purposes, if given or made at, or sent by registered mail to, the office of the Trustee located at [ ], Attention: [ ], or at any other address previously furnished in writing to the Company by the Trustee. Any notice required or permitted to be mailed to a Securityholder by the Company or the Trustee pursuant to the provisions of this Indenture shall be in writing and shall be deemed to be properly mailed by being deposited, first class mail postage prepaid, in a post office letter box in the United States addressed to such Securityholder at the address of such holder as shown on the Security Register.

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SECTION 15.05. Law of New York to Govern. This Indenture and each Security shall be deemed to be a contract made under the law of the State of New York, and for all purposes shall be construed in accordance with the law of said State.

SECTION 15.06. Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relative to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture, and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture, shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 15.07. Conflict of any Provision of Indenture with Trust Indenture Act. If and to the extent that any provision of this Indenture (or any provision of the terms of a series of Securities) limits, qualifies or conflicts with any provision of the Trust Indenture Act or another provision which is required or deemed to be included in this Indenture by any of the provisions of the Trust Indenture Act, the provision or requirement of the Trust Indenture Act shall control.

SECTION 15.08. Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 15.09. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

KANSAS CITY POWER & LIGHT COMPANY

By \_\_\_\_\_  
[Title]

[CORPORATE SEAL]  
ATTEST:

\_\_\_\_\_  
[Title]

[ \_\_\_\_\_ ],  
Trustee

By \_\_\_\_\_  
[Title]

[CORPORATE SEAL]  
ATTEST:

\_\_\_\_\_  
[Title]

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STATE OF NEW YORK     )  
                                  ) ss.  
COUNTY OF NEW YORK    )

On the <sup>th</sup> day of , 2000 before me personally came , to me known, who, being by me duly sworn, did depose and say that he is a of KANSAS CITY POWER & LIGHT COMPANY, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

[NOTORIAL SEAL]

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Notary Public

STATE OF NEW YORK     )  
                                  ) ss.  
COUNTY OF NEW YORK    )

On the <sup>th</sup> day of , 2000 before me personally came , to me known, who, being by me duly sworn, did depose and say that he is a of [ ], one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

[NOTORIAL SEAL]

---

Notary Public

Form of Board Resolution  
To be adopted by the Board of Directors of  
Kansas City Power & Light Company at its  
November 7, 2000 Meeting

RESOLVED, that the Board of Directors of the Company does hereby (i) authorize the preparation, execution, and filing with the Securities and Exchange Commission Registration Statements on Form S-3 ("Registration Statements") for the issuance of up to \$400 million of unsecured debt securities ("Debt"); and (ii) authorize the filing of any further documents or amendments as may be deemed necessary or appropriate to the Registration Statements (including but not limited to prospectus, prospectus supplements and pricing amendments).

FURTHER RESOLVED, that the Board of Directors does hereby (i) authorize and ratify the execution and filing of the Company's applications to the appropriate regulatory commissions seeking authority for the issuance of up to \$400 million of Debt; and (ii) authorize the preparation, execution and filing of such further documents and applications to the regulatory commissions as may be deemed necessary or appropriate.

FURTHER RESOLVED, that in connection with the issuance of the Debt, the officers of the Company are hereby authorized to negotiate, execute, deliver and perform (i) a Distribution Agreement or Underwriting Agreement with agents or underwriters to be selected by such officers; (ii) an Indenture or Underwriting Agreement with The Bank of New York, Trustee or other Trustee selected by the Company; and (iii) any other agreements necessary for the issuance of Debt, including, but not limited to, purchase agreements for the sale of the Debt.

FURTHER RESOLVED, that J. S. Latz and W. G. Riggins be and each of them hereby is, appointed as counsel to furnish such opinions or certificates as may be required under the Note Indenture.

FURTHER RESOLVED, that all actions heretofore taken, all payments heretofore made or caused to be made and all previous execution, acknowledgment and delivery of documents by the officers and employees of the Company with respect to the proposed financing as contemplated by these resolutions, are hereby approved, ratified and confirmed.

FURTHER RESOLVED, that the officers of this Company be, and hereby severally are, authorized and empowered to execute and deliver all closing documents (including certificates and legal opinions) necessary for the issuance of the Debt and are authorized, empowered and directed in its name and for its account, to take or cause to be taken and to make or cause to be made all such payments, and to execute, acknowledge and deliver all such instruments as may, in the judgment of said officers, be necessary, proper or convenient to carry out the intent of these resolutions and maintain the Debt.

Balance Sheets  
9/30/00  
(thousands of dollars)

ASSETS	Actual	Proforma*
<b>Utility Plant, at original cost</b>		
Electric	\$ 3,789,428	\$ 3,789,428
Less-accumulated depreciation	1,618,816	1,618,816
Net utility plant in service	2,170,612	2,170,612
Construction work in progress	276,854	276,854
Nuclear fuel, net of amortization of \$120,801 and \$108,077	33,288	33,288
Total	2,480,754	2,480,754
<b>Regulatory Asset - Recoverable Taxes</b>	106,000	106,000
<b>Investments and Nonutility Property</b>	287,080	374,455
<b>Current Assets</b>		
Cash and cash equivalents	1,502	1,502
Receivables	74,470	74,470
Other receivables	37,094	43,997
Fuel inventories, at average cost	19,758	19,758
Materials and supplies, at average cost	47,280	47,280
Deferred income taxes	4,316	4,316
Other	4,366	4,366
Total	188,786	195,689
<b>Deferred Charges</b>		
Regulatory assets	26,059	26,059
Prepaid pension costs	61,957	61,957
Other deferred charges	15,906	15,906
Total	103,922	103,922
<b>Total</b>	<b>\$ 3,166,542</b>	<b>\$ 3,260,820</b>
<b>LIABILITIES</b>		
<b>Capitalization</b>		
Common stock-authorized 150,000,000 shares without par value-		
61,908,726 shares issued-stated value	\$ 449,697	\$ 449,697
Retained earnings	479,702	469,035
Capital stock premium and expense	(1,668)	(1,668)
Common stock equity	927,731	917,064
Cumulative preferred stock	39,062	39,062
Company-obligated mandatorily redeemable Preferred		
Securities of a trust holding solely KCPL Sub. Debentures	150,000	150,000
Long-term debt	791,268	1,161,268
Total	1,908,061	2,267,394
<b>Current Liabilities</b>		
Commercial paper	222,125	-
Current maturities of long-term debt	60,500	-
Accounts payable	90,773	90,773
Accrued taxes	59,625	52,805
Accrued interest	6,155	30,545
Accrued payroll and vacations	21,862	21,862
Accrued refueling outage costs	11,069	11,069
Other	9,767	9,767
Total	481,876	216,821
<b>Deferred Credits</b>		
Deferred income taxes	613,878	613,878
Deferred investment tax credits	50,980	50,980
Other	111,747	111,747
Total	776,605	776,605
<b>Commitments and Contingencies</b>		
<b>Total</b>	<b>\$ 3,166,542</b>	<b>\$ 3,260,820</b>

\* Proformas reflect: 1) annualized interest of actual debt outstanding at 9/30/00, 2) retirement of \$222M in outstanding commercial paper and \$91M of MTN maturing through 2001 by issuing \$313M of unsecured MTN, 3) proceeds from remaining \$87M in unsecured MTN as temp. investments earning a rate of return equal to rate of interest, 4) all related tax effects

KANSAS CITY POWER & LIGHT COMPANY (Parent)

Income Statements

For the Twelve Months Ended September 30, 2000

(thousands of dollars)

	Actual	Proforma*
<b>Electric Operating Revenues</b>	<b>\$ 931,791</b>	<b>\$ 931,791</b>
<b>Operating Expenses</b>		
Operation		
Fuel	151,781	151,781
Purchased power	90,551	90,551
Other	209,912	209,912
Maintenance	70,978	70,978
Depreciation	121,807	121,807
Taxes		
Income	52,610	43,098
General	92,234	92,234
Total	789,873	780,361
<b>Electric Operating Income</b>	<b>141,918</b>	<b>151,430</b>
<b>Other Income and Deductions</b>		
Allowance for equity funds used during construction	3,245	3,245
Miscellaneous income	77,432	84,335
Miscellaneous deductions	(54,605)	(54,605)
Income taxes	8,732	6,040
Total	34,804	39,015
<b>Income Before Interest Charges</b>	<b>176,722</b>	<b>190,445</b>
<b>Interest Charges</b>		
Long-term debt	44,652	78,596
Short-term debt	9,554	-
Mandatorily Redeemable Preferred Securities	12,450	12,450
Miscellaneous	3,429	3,429
Allowance for borrowed funds used during construction	(9,733)	(9,733)
Total	60,352	84,742
<b>Net Income Before Pension Change</b>	<b>116,370</b>	<b>105,703</b>
<b>Pension Change net of tax</b>	<b>30,073</b>	<b>30,073</b>
<b>Periods Results</b>		
Net income	146,443	135,776
Preferred stock dividend requirements	2,094	2,094
Earnings available for common stock	<u>\$ 144,349</u>	<u>\$ 133,682</u>
Average number of common shares outstanding	61,877	61,877
Earnings per common share	\$ 2.33	\$ 2.16
Cash dividends per common share	\$ 1.66	\$ 1.66

\* Proformas reflect: 1) annualized interest of actual debt outstanding at 9/30/00, 2) retirement of \$222M in outstanding commercial paper and \$91M of MTN maturing through 2001 by issuing \$313M of unsecured MTN, 3) proceeds from remaining \$87M in unsecured MTN as temp. investments earning a rate of return equal to rate of interest, 4) all related tax effects



**KANSAS CITY POWER & LIGHT COMPANY (Parent)**  
**Statements of Cumulative Preferred Stock and Long-term Debt**  
**September 30, 2000**  
*(thousands of dollars)*

				Actual	Proforma
<b>Cumulative Preferred Stock</b>					
\$100 Par Value	3.80%	100,000	shares issued	\$ 10,000	\$ 10,000
	4.50%	100,000	shares issued	10,000	10,000
	4.20%	70,000	shares issued	7,000	7,000
	4.35%	120,000	shares issued	12,000	12,000
				<u>\$ 39,000</u>	<u>\$ 39,000</u>
<b>Cumulative Preferred Stock (Redeemable)</b>					
\$100 Par Value	4.00%	623	shares issued	\$ 62	\$ 62
<b>Company-obligated Mandatorily Redeemable Preferred Securities of a trust holding solely KCPL Subordinated Debentures</b>				<u>\$ 150,000</u>	<u>\$ 150,000</u>
<b>Long-Term Debt (excluding current maturities)</b>					
General Mortgage Bonds:					
Medium-term Notes (notes outstanding at 9/30/00 due 2001-2008)				\$ 236,000	\$ 206,000 *
Environmental Improvement Revenue Refunding Bonds due 2012-23				158,768	158,768
Guarantee Pollution Control Bonds due 2015-17				196,500	196,500
Unsecured Medium-term Notes due 2002				200,000	600,000 **
				<u>\$ 791,268</u>	<u>\$ 1,161,268</u>

\* Reflects retirement of \$30 million of Medium-term Notes maturing in the fourth quarter of 2001.

\*\* The maturity dates for the proposed \$400 million in Unsecured Medium-term Notes are unknown at this time.

**KANSAS CITY POWER & LIGHT COMPANY (Parent)**  
**Statement of Capital Expenditures and Long-term Financings**  
*(thousands of dollars)*

	<u>Gross Property Additions</u>	<u>Retirements and Sales</u>	<u>Net Property Change *</u>	<u>Permanent Financings</u>	<u>Amount</u>
12 Months Ended 12-31-95	\$ 138,312	\$ 36,019	\$ 102,293	Medium Term Notes	\$ 58,500
12 Months Ended 12-31-96	105,262	36,070	69,192	Medium Term Notes	98,000
12 Months Ended 12-31-97	129,482	71,457	58,025	Mandatorily Redeemable Preferred Securities	150,000
12 Months Ended 12-31-98	125,830	17,171	108,659	-	-
12 Months Ended 12-31-99	186,722	96,378	90,344	-	-
9 Months Ended 9-30-00	336,776	34,752	302,024	Unsecured Medium Term Notes	200,000
TOTALS	<u>\$ 1,022,384</u>	<u>\$ 291,847</u>	<u>\$ 730,537</u>		<u>\$ 506,500</u>

\* Gross property additions less retirements and sales.